

5612

1 IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE
2 FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

3
4 BOBBY NEWCOMB,

5 PLAINTIFF,

6 - VS - CASE NO. 88913-8 T.D.

7 R.J. REYNOLDS TOBACCO COMPANY, AND
8 THE BROWN AND WILLIAMSON TOBACCO
9 COMPANY, AS SUCCESSOR BY MERGER TO
10 THE AMERICAN TOBACCO COMPANY,
11 DEFENDANTS.

12 BEFORE: THE HONORABLE D'ARMY BAILEY

13
14 TRANSCRIPT OF PROCEEDINGS

15
16 MARCH 22, 1999
17 (AFTERNOON SESSION)

18 VOLUME 36

19
20
21 ALPHA REPORTING CORPORATION
22 (901) 523-8974
23 SOUTHERN REGISTERED REPORTERS
24 (901) 526-2179
25

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2 EDITH KARNEY, INDIVIDUALLY, AND
3 ON BEHALF OF THE ESTATE OF
4 JAMES WILEY KARNEY,
5 PLAINTIFFS,

6 - VS - CASE NO. 89196-8 T.D.

7 PHILLIP MORRIS, INC., AND
8 PHILLIP MORRIS COMPANIES, INC.,

9 DEFENDANTS.

10 RUBY SETTLE, INDIVIDUALLY, AND
11 ON BEHALF OF THE ESTATE OF
12 RAYMOND SETTLE,

13 PLAINTIFFS,

14 - VS - CASE NO. 89226-8 T.D.

15 B.A.T. INDUSTRIES, PLC; BATUS HOLDINGS,
16 INC.; BROWN & WILLIAMSON TOBACCO
17 CORPORATION; BRITISH AMERICAN TOBACCO
18 COMPANY, L.T.D.,

19 DEFENDANTS.

20 DENISE MCDANIEL, INDIVIDUALLY,
21 AND ON BEHALF OF THE ESTATE OF

18 FLORENCE BRUCH,
19 PLAINTIFF,
20 - VS - CASE NO. 90832-8 T.D.
21 BROWN AND WILLIAMSON TOBACCO
CORPORATION, AND
22 PHILLIP MORRIS, INC.,
23 DEFENDANTS.

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A P P E A R A N C E S

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GORDON SMITH, ESQ.
18 KING & SPALDING
191 PEACHTREE STREET
19 ATLANTA, GA 30303-17631
20 COURT REPORTERS: DEBRA A. DIBBLE, RPR
ALPHA REPORTING CORPORATION

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1 P R O C E E D I N G S
2 (AT 2:00 P.M., ON THE 22ND DAY OF MARCH,
3 1999, COURT MET, PURSUANT TO ADJOURNMENT, WHEN AND
4 WHERE THE FOLLOWING PROCEEDINGS OCCURRED, TO WIT:)
5 THE COURT: ALL RIGHT, LAWYERS, ARE YOU READY
6 FOR THE JURY?
7 MR. CURTIS JOHNSON: YES, YOUR HONOR.
8 MR. HANTHORN: YES, YOUR HONOR, AND THE
9 WITNESS.
10 THE COURT: ALL RIGHT, LET'S HAVE DR. NORRELL.
11 (WHEREUPON, THE JURY WAS
12 SEATED IN THE JURY BOX.)
13 THE COURT: THANK YOU, LADIES AND GENTLEMEN.
14 MR. HANTHORN, YOU MAY CONTINUE WITH THE CROSS
15 OF NORRELL.
16 MR. HANTHORN: THANK YOU, YOUR HONOR.
17 DIRECT EXAMINATION (CONTINUED.)
18 BY MR. HANTHORN:
19 Q. DR. NORRELL, THIS MAY BE OBVIOUS, BUT I JUST
20 WANT TO MAKE SURE THAT WE ARE BEING CLEAR. WHEN WE SAW
21 THE EXCERPT FROM THE HARRY REASONER REPORTS BEFORE THE
22 LUNCH BREAK, WAS THAT THE ENTIRE SHOW THAT THAT REPORT
23 REFLECTED FROM, OR WAS IT EXCERPTS?
24 A. NO, THOSE WERE JUST EXCERPTS, THE EXCERPT OF
25 THE BEGINNING AND THE END OF THE SHOW.

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1 Q. AND WHY, IN PARTICULAR, DID YOU CHOOSE THOSE
2 PORTIONS TO EXCERPT?
3 A. WELL, THEY MERELY IDENTIFY WHAT THE SHOW WAS
4 ABOUT. AND THE SHOW WAS REALLY, I THINK, ABOUT AN HOUR

5 LONG. IT WAS TOO LONG TO SHOW IN ITS ENTIRETY.
6 Q. I'M SURE WE'RE ALL GRATEFUL FOR THAT.
7 MR. HANTHORN: IF I COULD HAVE 208, PLEASE.
8 (WHEREUPON, EXHIBIT 208
9 WAS MARKED.)
10 Q. (BY MR. HANTHORN) IN ADDITION TO BEING ON
11 TELEVISION, WAS NEWS OF THE 1964 SURGEON GENERAL REPORT
12 WIDELY REPORTED HERE IN MEMPHIS?
13 A. YES, IT WAS.
14 THIS IS A FRONT PAGE OF THE MEMPHIS
15 PRESS-SCIMITAR ON JANUARY 11TH, 1964, AND THIS IS
16 TYPICAL OF THE HEADLINE COVERAGE, FRONT-PAGE COVERAGE
17 THAT THIS REPORT, THIS 1964 SURGEON GENERAL REPORT, GOT
18 AT THE TIME IN MEMPHIS, AND AROUND THE COUNTRY.
19 Q. NOW, IS THE PRESS-SCIMITAR AN EVENING PAPER?
20 A. YES.
21 Q. AND, IN FACT, IS THIS THE VERY SAME DAY, THE
22 VERY SAME SATURDAY THAT THE REPORT WAS ISSUED?
23 A. YES. PRESS-SCIMITAR IS AN AFTERNOON NEWSPAPER,
24 AND THEY WERE ABLE TO GET THIS IN THE AFTERNOON
25 NEWSPAPER.

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1 MR. HANTHORN: IF WE COULD HAVE 209, PLEASE.
2 (WHEREUPON, EXHIBIT NO. 209
3 WAS MARKED.)
4 Q. (BY MR. HANTHORN) DID THE NATIONAL NEWS
5 MAGAZINES PICK UP ON THE SURGEON GENERAL'S REPORT AS
6 WELL, IN THEIR -- WHATEVER THEIR NEXT ISSUE WAS?
7 A. YES. AND THIS EXHIBIT SHOWS THAT TIME,
8 NEWSWEEK, U.S. NEWS & WORLD REPORT, AND LIFE MAGAZINE,
9 MAJOR MAGAZINES, WEEKLY MAGAZINES AT THE TIME, ALL GAVE
10 LEAD COVERAGE TO THIS REPORT.
11 MR. HANTHORN: WE CAN HAVE 210, PLEASE.
12 (WHEREUPON, EXHIBIT NO. 210
13 WAS MARKED.)
14 Q. (BY MR. HANTHORN) IN ADDITION TO THE NATIONAL
15 NEWS MAGAZINES, DID THE OTHER NEWSPAPERS IN TENNESSEE
16 PICK UP ON THIS IN THEIR HEADLINES?
17 A. YES. WE SHOWED THE PRESS-SCIMITAR IN THE
18 EARLIER ONE. THE TOP ON THE LEFT THERE IS FROM THE
19 NASHVILLE BANNER. THE ONE IN THE MIDDLE IS A REPORT
20 FROM THE CHATTANOOGA TIMES. THE BOTTOM LEFT IS FROM
21 THE COMMERCIAL -- MEMPHIS COMMERCIAL APPEAL. THE TOP
22 RIGHT IS, 'DON'T SMOKE' THERE, IS FROM THE NASHVILLE,
23 TENNESSEAN, AND THE ONE ON THE BOTTOM RIGHT IS FROM THE
24 MEMPHIS WORLD, ALL IN JANUARY OF 1964.
25 Q. WHO'S TERRY?

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1 A. IT'S LUTHER TERRY, WHO WAS THE SURGEON GENERAL
2 OF THE UNITED STATES AT THAT TIME.
3 Q. AND THE MEMPHIS COMMERCIAL APPEAL YOU HAVE IS
4 FROM JANUARY 12. IS THAT THE FIRST COMMERCIAL APPEAL
5 PUBLISHED BEFORE THE REPORT CAME OUT?
6 A. YES, I BELIEVE SO.
7 MR. HANTHORN: IF WE COULD HAVE SLIDE 211,
8 PLEASE. THE SURGEON GENERAL REPORT.
9 (WHEREUPON, EXHIBIT NO. 211
10 WAS MARKED.)
11 Q. (BY MR. HANTHORN) NOW, IN ADDITION TO, DID
12 OTHER NEWSWORTHY EVENTS CONTINUE TO OCCUR ABOUT SMOKING
13 AND HEALTH AND BE REPORTED REGULARLY?
14 A. YES. THIS IS JUST ANOTHER SMALL SAMPLE OF THE
15 KINDS OF NEWS STORIES ON THE SMOKING AND HEALTH ISSUE

16 TO APPEAR IN TENNESSEE NEWSPAPERS. THESE ARE ALL FROM,
17 ACTUALLY FROM MEMPHIS NEWSPAPERS, BETWEEN 1965 AND '79.
18 THEY RECOUNT THE FIRST PACKAGE WARNINGS GOING ON.
19 Q. THAT'S THE ONE FROM JUNE 23, '65?
20 A. YES, IN THE COMMERCIAL APPEAL.
21 THEY REPORT ON ADDITIONAL INFORMATION COMING
22 OUT. STUDIES THAT, IN FACT, DISCUSS THE -- HOW MUCH
23 SMOKING SHORTENS LIVES.
24 AND THIS IS TYPICAL OF THE KINDS OF NEWSPAPER
25 COVERAGE THAT FOLLOWED FROM THE '64 REPORT IN THE NEXT

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1 FEW YEARS.
2 Q. IN 1960 WE HAD WHAT WAS THE TOBACCO WORKING
3 GROUP?
4 A. 1968 THE UNITED STATES PUBLIC HEALTH SERVICE
5 THROUGH THE NATIONAL CANCER INSTITUTE, FORMED AN
6 ALLIANCE WITH TOBACCO COMPANIES TO DO RESEARCH ON THE
7 HEALTH RISKS ASSOCIATED WITH CIGARETTES. AND THEY
8 CONTINUED TO, THROUGH THIS WORKING GROUP FORMED IN
9 1968, TO DO RESEARCH TOGETHER, UNTIL 1977.
10 Q. AND WAS THAT CALLED, THE LESS HAZARDOUS
11 CIGARETTE PROGRAM OF THE NATIONAL CANCER INSTITUTE?
12 A. YES.
13 Q. WHAT SIGNIFICANT HAPPENED WITH RESPECT TO
14 SMOKING AND HEALTH LEGISLATION IN 1971?
15 A. WELL, IN 1971 THE ADVERTISING OF CIGARETTES ON
16 TELEVISION WAS OUTLAWED. AS OF JANUARY THE 2ND, 1971,
17 THERE WERE NO MORE ADS ON TELEVISION.
18 Q. NOW, FROM TIME TO TIME THROUGHOUT THE MID AND
19 LATE '60S, WERE PUBLIC SERVICE ANNOUNCEMENTS RUN BY THE
20 AMERICAN CANCER SOCIETY, AMONG OTHERS?
21 A. YES. THE AMERICAN CANCER SOCIETY IN THE LATE
22 '60S PRODUCED A NUMBER OF HIGHLY EFFECTIVE ADS THAT
23 WERE -- THAT ENCOURAGED PEOPLE TO STOP SMOKING, AND TO
24 NOT START SMOKING.
25 Q. DO YOU HAVE WITH YOU TODAY A 1964 WALTER

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1 CRONKITE REPORT ABOUT ONE OF THOSE PUBLIC SERVICE ADS?
2 A. WELL, I BELIEVE IT WAS A LITTLE LATER. IT WAS
3 IN THE LATE -- I BELIEVE IT WAS IN 1969.
4 Q. I'M SORRY, I MISSPOKE.
5 A. THIS IS A REPORT FROM THE EVENING NEWS, THE CBS
6 EVENING NEWS, ON WHICH WALTER CRONKITE WAS THE MAIN
7 HOST AND THE MAIN REPORTER.
8 AND THIS IS A STORY THAT GIVES US SOME EVIDENCE
9 OF THE AMERICAN CANCER SOCIETY STOP SMOKING CAMPAIGN.
10 MR. HANTHORN: IF WE COULD RUN 212, PLEASE.
11 (WHEREUPON, EXHIBIT NO. 212
12 WAS MARKED.)
13 (WHEREUPON, THE FOLLOWING VIDEO
14 TAPE WAS PLAYED.)
15 "AN ACTOR, WHOSE FACE TO MILLIONS WAS MORE
16 FAMILIAR THAN HIS NAME, DIED SOMETIME AGO, AND HIS
17 DEATH ACCELERATED A CRUSADE HE STARTED IN HIS LIFETIME.
18 JUDD DUVALL HAS THE STORY.
19 'DID YOU DISCOVER THAT COLIN HAD AMASSED OVER A
20 HUNDRED THOUSAND DOLLARS IN A BANK IN ENSENADA, AND
21 THAT YOUR STOLEN FURS ARE REALLY DOWN THERE IN STORAGE
22 UNDER HIS NAME? DID YOU --'
23 EVERY TIME RAYMOND BURR, AS PERRY MASON, WON A
24 CASE, BILL TALLMAN LOST ONE.
25 TALLMAN PLAYED THE PROSECUTOR IN THE TELEVISION

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1 SERIES WHICH IS STILL SEEN IN RERUNS. TALLMAN DIED A
2 YEAR AGO, KILLED BY LUNG CANCER AT THE AGE OF 53.
3 MORE OFTEN THAN THE PERRY MASON RERUNS,
4 HOWEVER, TELEVISION VIEWERS SEE THIS BRIEF FILM. IT
5 WAS MADE BY TALLMAN JUST PRIOR TO HIS DEATH.
6 'I'VE GOT LUNG CANCER. SO TAKE SOME ADVICE
7 ABOUT SMOKING AND LOSING FROM SOMEONE WHO'S BEEN DOING
8 BOTH FOR YEARS. IF YOU DON'T SMOKE, DON'T START. IF
9 YOU DO SMOKE, QUIT.
10 DON'T BE A LOSER.'".
11 Q. (BY MR. HANTHORN) IN ADDITION TO THAT PUBLIC
12 SERVICE ANNOUNCEMENT, WERE THERE OTHER PUBLIC SERVICE
13 ANNOUNCEMENTS THAT WERE RUN ON TELEVISION IN THE 1966,
14 '67, ET CETERA, TIME FRAME BY THE AMERICAN CANCER
15 SOCIETY?
16 A. YES. THERE WAS A WHOLE SERIES OF THEM THAT RAN
17 OFTEN ON TELEVISION.
18 Q. NOW, DID THERE COME A TIME, DR. NORRELL, WHEN
19 WARNING LABELS WERE FIRST PLACED ON CIGARETTES?
20 A. YES. THERE WAS LEGISLATION PASSED IN THE
21 CONGRESS IN 1965 TO PUT A WARNING LABEL ON CIGARETTES,
22 AND THAT WARNING LABEL WENT ON IN JANUARY OF 1966, THE
23 FIRST WARNING LABEL.
24 Q. NOW, PRIOR TO THE TIME THE WARNING LABELS WERE
25 ACTUALLY PUT ON, HAD THERE BEEN PRIOR EFFORTS TO
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1 REQUIRE WARNING LABELS?
2 A. THERE HAD BEEN SUGGESTIONS AND ARGUMENTS FOR
3 PUTTING LABELS ON CIGARETTE PACKAGES FOR A NUMBER OF
4 YEARS. I ENCOUNTERED IT IN ABOUT 1957, WHEN IT CAME UP
5 IN THE CONTEXT OF THE BLACKENING HEARING IN 1957.
6 AND AT THAT TIME THE SURGEON GENERAL, WHO WAS
7 LEROY BURNEY, AS HAD OTHER IMPORTANT LEADING PEOPLE OF
8 THE AMERICAN CANCER SOCIETY, SAID, IN EFFECT, THEY
9 DIDN'T THINK IT WAS NECESSARY TO PUT A WARNING LABEL ON
10 BECAUSE THE HAZARDS OF SMOKING WERE SO WIDELY KNOWN.
11 LATER ON THERE WOULD BE SIMILAR KINDS OF SUGGESTIONS
12 MADE.
13 IN 1964 THE AMERICAN MEDICAL ASSOCIATION SAID,
14 IN ABOUT THE TIME OF THE SURGEON GENERAL'S REPORT, THAT
15 THEY TOO BELIEVED THAT THE PUBLIC KNEW OF THE -- OF THE
16 DANGERS ENOUGH THAT A WARNING ON PACKAGES WAS NOT
17 NECESSARY.
18 STILL, THE CONGRESS BELIEVED THAT IT WAS, AND A
19 WARNING WENT ON THE FIRST TIME IN 1966.
20 MR. HANTHORN: 213, PLEASE.
21 (WHEREUPON, EXHIBIT NO. 213
22 WAS MARKED.)
23 Q. (BY MR. HANTHORN) DO YOU HAVE AN EXCERPT FROM
24 WHERE THE AMERICAN MEDICAL ASSOCIATION HAD POSITION IN
25 APRIL OF 1964?
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1 A. YES.
2 Q. DID THE AMA NOTE THAT THE HEALTH HAZARDS OF
3 EXCESSIVE SMOKING HAVE BEEN WELL PUBLICIZED FOR MORE
4 THAN TEN YEARS AND ARE COMMON KNOWLEDGE?
5 A. YES. THE LEAD PERSON IN THE AMA WROTE THAT.
6 Q. DR. NORRELL, WE'VE MENTIONED BRIEFLY A NUMBER
7 OF MATERIALS AND ITEMS THAT YOU'VE LOOKED AT.
8 IN THESE BOXES, SIR, DO WE HAVE PHOTOCOPIES IN
9 NOTEBOOKS OF THE VARIOUS MATERIALS THAT ARE ON PAPER
10 THAT YOU HAVE EXAMINED IN THE COURSE OF PREPARING TO
11 GIVE YOUR TESTIMONY HERE TODAY?

12 A. YES. IN THOSE BOXES ARE THE RELIANCE
13 MATERIALS, ABOUT 2,000, A LITTLE MORE THAN 2,000
14 DOCUMENTS, THAT ARE THE BASIS OF MY TESTIMONY TODAY.
15 Q. NOW, DO THESE FIVE BANKER'S BOXES, SOME 2,000
16 PLUS DOCUMENTS, REPRESENT EVERYTHING THAT YOU HAVE
17 HEARD OR READ ON THIS SUBJECT?
18 A. NO. THEY STILL ARE ONLY A SAMPLE OF WHAT I
19 LOOKED AT. THEY ARE ONLY A SAMPLE OF THE ARTICLES IN
20 THE COMMERCIAL APPEAL, OR IN THE VARIOUS MAGAZINES.
21 THERE ARE MANY, IN FACT MANY THOUSAND MORE, THAT I HAVE
22 CONSULTED OVER THE YEARS IN DOING THIS RESEARCH.
23 Q. ARE THESE, HOWEVER, A REPRESENTATIVE SAMPLE OF
24 THE TYPE OF MATERIAL THAT YOU WERE FINDING?
25 A. YES, THEY ARE A REPRESENTATIVE SAMPLE.

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1 Q. BASED ON YOUR KNOWLEDGE, YOUR SKILL, YOUR
2 EXPERIENCE, YOUR TRAINING, THE MATERIALS THAT YOU HAVE
3 LOOKED AT, VIDEOS THAT YOU HAVE LOOKED AT, THE MUSIC
4 THAT YOU HAVE RESEARCHED, ET CETERA, BASED UPON ALL OF
5 THAT, DO YOU HAVE AN OPINION AS TO WHETHER THE HEALTH
6 RISKS ASSOCIATED WITH SMOKING WERE COMMON KNOWLEDGE
7 THROUGHOUT THE 20TH CENTURY, AND CERTAINLY THE LIVES OF
8 THESE PLAINTIFFS?
9 A. YES.
10 Q. WHAT IS THAT OPINION?
11 A. WELL, MY OPINION IS THAT THE AMERICAN PUBLIC
12 HISTORICALLY HAS KNOWN OF THE HEALTH RISKS ASSOCIATED
13 WITH SMOKING, INCLUDING THAT SMOKING WAS VERY BAD FOR
14 YOUR HEALTH, THAT IT COULD KILL YOU. AND THAT SMOKING
15 WAS A -- IS A HABIT THAT IS HARD TO QUIT, HARD TO
16 BREAK.
17 Q. YOU'VE MENTIONED THIS NAME BEFORE, BUT WHO'S
18 DANIEL HORN?
19 A. DANIEL HORN IS, OR WAS, IN THE 1950S, A MAN WHO
20 WAS A STATISTICIAN FOR THE AMERICAN CANCER SOCIETY, AND
21 HE WORKED WITH, HIS PARTNER, DR. HORN -- DR. HAMMOND,
22 TO PRODUCE THE AMERICAN CANCER SOCIETY STUDY THAT
23 PROVIDED SOME OF THE STRONGEST EVIDENCE FOR THE
24 ASSOCIATION BETWEEN SMOKING AND LUNG CANCER.
25 Q. IN 1968 DID DANIEL HORN HAVE OCCASION TO

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1 ADDRESS THE SUBJECT OF COMMON KNOWLEDGE?
2 A. YES.
3 MR. HANTHORN: IF WE COULD HAVE SLIDE 214,
4 PLEASE.
5 (WHEREUPON, EXHIBIT NO. 214
6 WAS MARKED.)
7 THE WITNESS: THIS IS DR. HORN, AND THIS IS IN
8 1968. THEY HAVE THEIR -- OF COURSE THE CIGARETTE
9 PACKAGE WITH THE WARNING THAT HAD RECENTLY GONE ON IT,
10 GONE ON CIGARETTE PACKAGES.
11 AT THE TIME HORN MADE THE COMMENT, THOUGH,
12 THAT, "YOU COULD STAND ON A ROOFTOP AND SHOUT 'SMOKING
13 IS DANGEROUS' AT THE TOP OF YOUR LUNGS, AND YOU WOULD
14 NOT BE TELLING ANYONE ANYTHING THAT THEY DID NOT
15 ALREADY KNOW."
16 Q. (BY MR. HANTHORN) BASED UPON WHAT YOU HAVE
17 SEEN, YOUR STUDY, YOUR WORK, WAS DR. HORN CORRECT?
18 A. YES, I BELIEVE HE WAS.
19 MR. HANTHORN: NO FURTHER QUESTIONS.
20 THE COURT: ALL RIGHT. LET'S SEE NOW. WE MAY
21 WANT TO GET THE SHERIFF OR SOMEONE TO HELP MOVE THOSE
22 BOXES, UNLESS THEY'RE GOING TO BE SUBJECT TO CROSS

23 EXAMINATION.
24 I DON'T KNOW WHETHER THAT COMES IN THE
25 SHERIFF'S JOB DESCRIPTION.

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1 MR. HANTHORN: I WILL ASSIST HIM. IT CERTAINLY
2 COMES WITHIN THE JOB DESCRIPTION OF THE PERSON WHO PUT
3 THEM THERE.
4 THE COURT: THANK YOU, GENTLEMEN.
5 MS. FLORENCE JOHNSON: IF I COULD HAVE A
6 MINUTE, YOUR HONOR, TO SET UP.
7 THE COURT: CERTAINLY.
8 MS. JOHNSON: WOULD IT PLEASE THE COURT.

9 CROSS EXAMINATION
10 BY MS. FLORENCE JOHNSON:
11 Q. DR. NORRELL, I'M FLORENCE JOHNSON.
12 YOU'LL HAVE TO EXCUSE ME, MY VOICE IS ABOUT TO
13 LEAVE ME.
14 YOU TESTIFIED ON THURSDAY OF LAST WEEK, AND
15 THEN AGAIN THIS MORNING, ABOUT YOUR ASSIGNMENT TO LOOK
16 AT WHAT WAS PUBLIC KNOWLEDGE ABOUT THE HEALTH RISKS OF
17 SMOKING. IS THAT A CORRECT EXPLANATION OF WHAT YOUR
18 ASSIGNMENT WAS?
19 A. I DID DO RESEARCH ON THAT, YES, MA'AM.
20 Q. THIS IS NOT THE FIRST TIME YOU HAVE DONE THIS
21 KIND OF RESEARCH FOR THE TOBACCO INDUSTRY, IS IT?
22 A. NO. I HAVE DONE RESEARCH NOW FOR ALMOST FIVE
23 YEARS ON THIS SUBJECT OF SMOKING AND HEALTH.
24 Q. WHAT OTHER CASES, DR. NORRELL, HAVE YOU DONE
25 RESEARCH FOR THE TOBACCO INDUSTRY ON THIS PARTICULAR

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1 ISSUE?
2 A. WELL, I DID RESEARCH ON A CASE IN ALABAMA. IT
3 WAS THE FIRST CASE THAT I DID. AND I HAVE DONE
4 RESEARCH ON CASES IN FLORIDA AND IN LOUISIANA.
5 Q. WHAT YEAR DID YOU DO RESEARCH FOR THE CASE IN
6 ALABAMA?
7 A. AS I RECALL, IT WAS 1994 AND 1995.
8 Q. AND FOR THE CASES IN FLORIDA, WHAT YEAR DID YOU
9 DO THAT RESEARCH?
10 A. AS I RECALL, THAT WOULD HAVE -- WAS IN 1997 AND
11 1998.
12 Q. AND THE CASE IN LOUISIANA?
13 A. 19 -- I BELIEVE THAT WAS IN 1995 AND '96.
14 Q. WHEN YOU DID THIS RESEARCH IN 1994 THROUGH
15 1997, DID YOU WORK BY YOURSELF AND COME OUT WITH
16 RESEARCH, OR DID YOU WORK WITH OTHER RESEARCHERS?
17 A. WELL, I DID THE RESEARCH. I OFTEN DIRECTED A
18 RESEARCH ASSISTANT TO HELP ME.
19 Q. MORE THAN ONE RESEARCH ASSISTANT?
20 A. YES.
21 Q. AND FROM 1994 THROUGH 1997 WAS IT THE SAME
22 RESEARCH ASSISTANT OR WAS IT A DIFFERENT PERSON?
23 A. WELL, I WOULD HAVE DIFFERENT ONES AT DIFFERENT
24 TIMES. TYPICALLY THEY WERE THE PEOPLE WHO WERE IN
25 GRADUATE SCHOOL, AND SOMETIMES THEY WOULD MOVE ON TO

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1 OTHER JOBS OR LEAVE SCHOOL.
2 Q. SO THE INFORMATION THAT WE'VE SEEN THAT'S BEEN
3 CONTAINED IN THESE BOXES, THAT'S BEEN PUT UP ON THIS
4 SCREEN AS VIDEO EVIDENCE, THAT YOU'VE DEALT WITH IN
5 YOUR NOTEBOOKS, ARE THINGS THAT PERHAPS YOU HAVE
6 COMPILED, OR PERHAPS A RESEARCH ASSISTANT COMPILED FOR
7 YOU; IS THAT CORRECT?

8 A. YES.
9 Q. AND WHEN YOU'VE DONE THIS RESEARCH FROM 1994,
10 1995, '96, AND '97, FOR THE TOBACCO INDUSTRY, THAT'S
11 SOMETHING YOU GOT PAID FOR, DID YOU NOT?
12 A. YES.
13 Q. AND THE RESEARCH ASSISTANTS, I WOULD ASSUME,
14 GOT PAID AS WELL?
15 A. YES.
16 Q. ARE YOU BEING PAID FOR THE TESTIMONY YOU'RE
17 GIVING HERE TODAY?
18 A. YES.
19 Q. DO YOU KNOW HOW MUCH YOU'RE BEING PAID FOR THE
20 TESTIMONY HERE TODAY?
21 A. YES.
22 Q. AND HOW MUCH IS THAT?
23 A. I'M BEING PAID \$100 AN HOUR.
24 Q. YOU'VE DISCUSSED AT LENGTH, DR. NORRELL, THE
25 BACKGROUND THAT YOU HAVE IN THIS PARTICULAR AREA, AND
5630
1 THE BACKGROUND OF YOUR TEACHINGS AT THE UNIVERSITY OF
2 TENNESSEE, AND THE TEACHINGS THAT YOU DID AT THE
3 UNIVERSITY OF ALABAMA, AS BEING IN THE AREA OF HISTORY.
4 GENERALLY THE RESEARCH YOU ARE HERE TO TESTIFY
5 ABOUT TODAY IS NOT SOMETHING THAT YOU DEAL WITH ON A
6 DAY-TO-DAY BASIS IN YOUR CLASS AT THE UNIVERSITY OF
7 TENNESSEE, FOR INSTANCE, IS IT?
8 A. NO, I DON'T TEACH A COURSE ON SMOKING AND
9 HEALTH, AND I'M NOT SURE -- I DON'T BELIEVE THERE'S
10 PROBABLY SUCH A COURSE IN ANY UNIVERSITY AROUND.
11 I DO TEACH ABOUT THE SIGNIFICANCE OF TOBACCO IN
12 MY AMERICAN HISTORY AND SOUTHERN HISTORY.
13 THE IMPORTANCE OF THE EMERGENCE OF THE
14 CIGARETTE, I MENTION THAT AS WELL.
15 Q. THAT'S IN THE CONTEXT OF YOUR HISTORY CLASS,
16 THE SOUTHERN HISTORY CLASS?
17 A. SOUTHERN HISTORY AND AMERICAN HISTORY CLASSES.
18 Q. YOU MENTIONED, WHEN MR. HANTHORN WAS
19 QUESTIONING YOU, THAT YOU HAD AN INTEREST IN THIS AREA
20 OF THE PUBLIC KNOWLEDGE ABOUT SMOKING AND HEALTH. IS
21 THAT CORRECT?
22 A. YES, I DO. I DO HAVE AN INTEREST. I'VE DONE
23 THIS RESEARCH. IT'S AN INTERESTING SUBJECT.
24 Q. OTHER THAN THE RESEARCH THAT YOU MENTIONED THAT
25 YOU DID FOR THE TOBACCO INDUSTRY IN 1994 THROUGH 1997,
5631
1 HAVE YOU DONE ANY OTHER WORK, PUBLISHED A PAPER, AN
2 ESSAY, ON THIS PARTICULAR AREA?
3 A. NO.
4 Q. DO YOU HAVE ANY PLANS TO DO THAT?
5 A. NOT AT THE MOMENT, NO.
6 Q. SO PRIMARILY YOUR INTEREST IN THIS AREA HAS
7 BEEN GLEANED THROUGH YOUR RESEARCH FOR THE TOBACCO
8 INDUSTRY, THE RESEARCH THAT YOU'RE BEING PAID FOR?
9 A. YES, BUT I HAVE, OF COURSE, FOLLOWED THE SAME
10 PROTOCOL, THE SAME METHOD THAT I WOULD USE FOR ANY
11 RESEARCH THAT I DO.
12 Q. IN 1994 WHEN YOU STARTED WORKING ON THIS
13 RESEARCH FOR THE TOBACCO INDUSTRY, HOW DID YOU BECOME
14 AFFILIATED WITH THE TOBACCO INDUSTRY?
15 A. WELL, MISS JOHNSON, I ACTUALLY BECAME
16 AFFILIATED WITH A COUPLE LAWYERS WHO CALLED ME AND
17 ASKED ME. THEY SAID THEY KNEW THAT I HAD DONE EXPERT
18 WITNESS WORK IN CIVIL RIGHTS CASES, AND THEY SAID,

19 WOULD YOU BE INTERESTED IN WORKING ON THESE KINDS OF
20 CASES? AND I SAID I'D CERTAINLY CONSIDER IT.
21 AND THEY CAME TO SEE ME, AND I TALKED TO THEM
22 AND I AGREED TO THEM.
23 Q. SO LAWYERS CALLED YOU AND EXPRESSED AN INTEREST
24 IN YOUR CASES IN CIVIL RIGHTS, AND ASKED YOU TO
25 INVESTIGATE THIS AREA OF PUBLIC HEALTH AND SMOKING?

5632

1 A. NO. THEY KNEW THAT I HAD DONE HISTORICAL
2 EXPERT WITNESS RESEARCH.
3 Q. IN THE AREA OF CIVIL RIGHTS?
4 A. IN CIVIL RIGHTS CASES. AND BECAUSE THEY KNEW I
5 DID THIS SORT OF WORK FOR -- OUTSIDE THE UNIVERSITY,
6 THEY ASKED IF I WOULD BE INTERESTED IN TALKING TO THEM
7 ABOUT A CASE THAT THEY HAD IN ALABAMA. THEY NEEDED
8 SOMEBODY WHO WAS IN ALABAMA.
9 Q. AND YOU MENTIONED EARLIER ON DIRECT EXAMINATION
10 THAT YOU ONLY CAME TO THE UNIVERSITY OF TENNESSEE, I
11 IMAGINE THE FALL OF 1998; IS THAT CORRECT?
12 A. YES.
13 Q. PRIOR TO THAT YOU WERE AT THE UNIVERSITY OF
14 ALABAMA?
15 A. YES.
16 Q. SO THE PRIMARY FOCUS OF YOUR WORK, AT THAT
17 TIME, IN TERMS OF HISTORY WAS, AS I UNDERSTAND YOU TO
18 SAY, ON THE CIVIL RIGHTS MOVEMENT IN TUSKEGEE, AND ON
19 THE AREA OF SOUTHERN HISTORY IN ALABAMA.
20 A. YES. I HAVE DONE -- MOST OF MY RESEARCH HAS TO
21 DO WITH AMERICAN RIGHTS RELATIONS, INCLUDING CIVIL
22 RIGHTS. A LOT OF IT HAS -- MOST OF IT HAS HAD TO DO
23 WITH SOUTHERN -- THAT ISSUE IN A SOUTHERN CONTEXT,
24 ALTHOUGH I DO LOOK AT RACE RELATIONS OUTSIDE THE SOUTH
25 NOW AS WELL.

5633

1 Q. THAT'S CURRENTLY? YOU'RE SAYING NOW?
2 A. YES.
3 Q. AS OPPOSED TO BEFORE, WHEN YOU WROTE REAPING
4 THE WHIRLWIND?
5 A. YES. I'M REALLY TRYING TO LOOK AT THE LARGER
6 AMERICAN PICTURE THAN JUST A SINGLE PLACE.
7 Q. I MENTIONED YOUR BOOK THAT MR. HANTHORN
8 MENTIONED, REAPING THE WHIRLWIND. THAT WAS BASICALLY A
9 STUDY WITH REGARD TO ONE PLACE, AS YOU MENTIONED,
10 TUSKEGEE, ALABAMA; IS THAT CORRECT?
11 A. YES.
12 Q. AS I MENTIONED, MY UNDERSTANDING OF YOUR
13 ASSIGNMENT FROM RJR, THAT WAS BASICALLY TO LOOK AT WHAT
14 WAS AVAILABLE TO THE PUBLIC AS FAR AS KNOWLEDGE ABOUT
15 SMOKING AND HEALTH. IS THAT A FAIR STATEMENT?
16 A. WELL, ACTUALLY IT WAS MORE THAN JUST -- IT
17 WAS -- I WAS CONTACTED BY LAWYERS FROM SEVERAL
18 DIFFERENT LAW FIRMS.
19 WITH REGARD TO WHAT MY RESEARCH WAS, IT WAS
20 WHAT THE PUBLIC KNEW ABOUT THE SMOKING AND HEALTH
21 ISSUE. THAT'S WHAT MY RESEARCH -- THAT'S THE RESEARCH
22 THEY ASKED ME TO UNDERTAKE, AND THAT I DID UNDERTAKE.
23 Q. PUBLIC KNOWLEDGE ABOUT SMOKING AND HEALTH?
24 A. PUBLIC AWARENESS, KNOWLEDGE, COMMON KNOWLEDGE,
25 ALL OF THOSE PARAMETERS.

5634

1 Q. AND IN THE COURSE OF REVIEWING THE DOCUMENTS
2 THAT MR. HANTHORN STACKED UP HERE, IN A VERY DRAMATIC
3 MOVE, SOME 2,000 DOCUMENTS IN TERMS OF BOOKS AND

4 DOCUMENTS, LOOKING AT SONGS AND VIDEOTAPE. YOU DIDN'T
5 HAVE OCCASION, DID YOU, DR. NORRELL, TO LOOK AT THE
6 DOCUMENTS THAT, SAY, THAT THE TOBACCO COMPANY HAD IN
7 THEIR POSSESSION? YOU DIDN'T HAVE OCCASION TO LOOK AT
8 THOSE DOCUMENTS, DID YOU?

9 A. NO.

10 Q. DID YOU LOOK AT ANY PRESS RELEASES FROM ANY OF
11 THE TOBACCO DEFENDANTS? DID YOU LOOK AT ANY OF THE
12 PRESS RELEASES THAT PERHAPS THE TOBACCO INDUSTRY PUT
13 OUT THROUGH THE TOBACCO INSTITUTE?

14 A. NO.

15 Q. DO YOU KNOW WHAT THE TOBACCO INSTITUTE IS?

16 A. YES.

17 Q. AND WHAT IS THAT, SIR?

18 A. THE TOBACCO INSTITUTE IS AN ORGANIZATION THAT
19 PROMOTES THE INTEREST OF THE TOBACCO COMPANIES.

20 Q. IN YOUR RESEARCH DID YOU COME ACROSS ANY PRESS
21 RELEASES FROM THE TOBACCO INSTITUTE WITH REGARD TO THE
22 SMOKING AND HEALTH ISSUE?

23 A. NO.

24 Q. EARLIER WE SAW A PORTION OF A VIDEOTAPE FROM
25 THE SHOW SEE IT NOW.

5635

1 A. YES.

2 Q. AND YOU MENTIONED THAT SEE IT NOW, IN TERMS OF
3 TODAY'S PRESENT CONTEXT, WOULD BE A SIMILAR SHOW TO 60
4 MINUTES. IS THAT A FAIR STATEMENT?

5 A. YES.

6 Q. BUT EARLIER IN YOUR DISCUSSION OF AN
7 UNDERSTANDING OF HISTORY, YOU MENTIONED THAT IT'S
8 NECESSARY NOT TO VIEW EVENTS OF THE PAST WITH A
9 NECESSARILY MYOPIC VIEW OF WHAT'S HAPPENING RIGHT NOW.
10 IS THAT CORRECT?

11 A. YEAH. I THINK WHAT I SAID WAS THAT WE DON'T
12 WANT TO JUDGE THE PAST BY TODAY'S STANDARDS, OR WHAT WE
13 KNOW TODAY. WHAT WE KNOW TO BE TRUE TODAY BY -- JUDGE
14 THE PAST WITH THE KIND OF 20/20 HINDSIGHT.

15 Q. AND YOU ALSO MENTIONED, IN YOUR DIRECT
16 EXAMINATION, THAT IT'S NECESSARY TO LOOK AT THE EVENTS
17 OF HISTORY IN CONTEXT SO AS NOT TO ELICIT A PARTICULAR
18 BIAS ONE WAY OR THE OTHER. IS THAT A FAIR STATEMENT OF
19 WHAT YOUR TESTIMONY WAS?

20 A. YES, MA'AM.

21 Q. SO CONTEXT IS SOMETHING THAT'S PARTICULARLY
22 IMPORTANT WHEN WE VIEW EVENTS IN HISTORY. YES?

23 A. I BELIEVE SO, YES, MA'AM.

24 Q. I'M GOING TO ASK YOU, DR. NORRELL -- YOU VIEWED
25 ALL OF THE SEE IT NOW PIECE, DID YOU NOT?

5636

1 A. YES.

2 Q. NOT JUST THE PART THAT YOU EXCERPTED FOR THE
3 JURY; IS THAT CORRECT?

4 A. YES, MA'AM.

5 Q. I'M GOING TO ASK YOU NOW TO TAKE A LOOK, WITH
6 THE COURT'S PERMISSION, AT A PORTION OF THE SEE IT NOW
7 TAPE THAT WAS NOT PLAYED FOR THE JURY.

8 MR. HANTHORN: NO OBJECTION.

9 (WHEREUPON, THE FOLLOWING VIDEOTAPE
10 WAS PLAYED.)

11 "NEXT TUESDAY DR. ELMER HESS, OF ERIE,
12 PENNSYLVANIA, BECOMES THE PRESIDENT OF THE AMERICAN
13 MEDICAL ASSOCIATION. HE SPEAKS NOW, HOWEVER, AS A
14 PHYSICIAN WHO DOES NOT BELIEVE THERE IS ANY IMPORTANT

15 RELATIONSHIP BETWEEN SMOKING AND CANCER."
16 MS. FLORENCE JOHNSON: STOP IT FOR JUST A
17 MINUTE.
18 Q. (BY MS. FLORENCE JOHNSON) DO YOU KNOW WHO THIS
19 INDIVIDUAL IS IN THE TAPE?
20 A. YES, MA'AM. THAT'S THE MAN WHO I BELIEVE WAS
21 THE PRESIDENT OF THE AMERICAN MEDICAL ASSOCIATION AT
22 THE TIME. HE'S FROM PENNSYLVANIA.
23 Q. DO YOU KNOW WHAT HIS NAME IS?
24 A. I DON'T KNOW.
25 Q. IS IT ELMER HESS? DOES THAT SOUND FAMILIAR?
5637
1 A. VAGUELY, YES. I THINK THEY PUT HIS NAME UP
2 THERE IN A MINUTE.
3 "WELL, I THINK YOU HAVE TO -- DEPENDS UPON THE
4 MAN WHO DOES THE STATISTICS MORE THAN ANYTHING ELSE.
5 YOU'VE HEARD THE OLD SAYING, LIES, DAMN LIES, AND
6 STATISTICS. YOU CAN MAKE STATISTICS DO ANYTHING IF
7 YOU'RE INTERESTED IN COMING UP WITH A CERTAIN
8 OBJECTIVE.
9 NOW, I DON'T MEAN TO SAY THAT THE STATISTICS
10 THAT ARE GIVEN TO US ON VARIOUS THINGS ARE INCORRECT,
11 BUT VERY OFTEN THE INDIVIDUAL IS SO ENTHUSIASTIC THAT
12 HE POINTS THE STATISTICS TO PROVE HIS POINT.
13 HOW DO YOU ACCOUNT FOR THE RISE IN LUNG CANCER?
14 WELL, I THINK -- I DON'T THINK SMOKING
15 CIGARETTES PARTICULARLY HAS ANYTHING MUCH TO DO WITH
16 IT.
17 IN THE FIRST PLACE, WE HAVE, THROUGH SCIENTIFIC
18 MEDICAL ACHIEVEMENT, PROLONGED HUMAN LIFE FROM AN AGE
19 OF 37 AT THE TURN OF THE CENTURY, TO 67 IN THE MALE OF
20 TODAY AND 72 FOR OUR WOMEN.
21 THAT MEANS THAT A VERY LARGE PROPORTION OF OUR
22 POPULATION ARE GOING TO LIVE IN THE CANCER AGE, WHICH
23 IS USUALLY AFTER 40. ALTHOUGH CANCER CAN OCCUR UNDER
24 40, BUT MOST OF YOUR CANCER IS AFTER 40.
25 THE SECOND REASON IS THAT WE HAVE A VERY MUCH
5638
1 MORE IMPROVED SCIENTIFIC APPROACH TO DIAGNOSIS, AND WE
2 ARE ABLE TO DIAGNOSE CANCER TODAY, PARTICULARLY OF THE
3 LUNG, MUCH EASIER THAN WE WERE ABLE TO DIAGNOSE IT 15
4 OR 20 YEARS AGO.
5 IN OTHER WORDS, WE'RE DISCOVERING CANCER TODAY,
6 WHEN 15 OR 20 YEARS AGO WE WERE UNABLE TO DISCOVER IT
7 UNTIL IT WAS READY TO KILL.
8 ARE YOU A SMOKER, DR. HESS?
9 YES, AND I CAN'T SEE WHERE IT'S DONE ME A GREAT
10 DEAL OF HARM.
11 CIGARETTE SMOKING MAY BE A SMELLY, DIRTY, AND
12 VERY EXPENSIVE HABIT. I'VE BEEN A SMOKER ALL OF MY
13 LIFE. THERE HAVE BEEN PERIODS WHEN I HAVE QUIT
14 SMOKING, BUT ALL OF MY LIFE I'VE SMOKED, AND I HAVE
15 ENJOYED SMOKING.
16 I WOULD RATHER, MYSELF, LIVE 15 VERY, VERY
17 ACTIVE, PRODUCTIVE YEARS, THAN LIVE 25 YEARS AS A
18 POTATO, UNABLE TO DO ANYTHING BUT JUST EXIST. AND THAT
19 ISN'T THE OBJECT OF SCIENTIFIC MEDICINE. THE OBJECT OF
20 SCIENTIFIC MEDICINE IS TO INCREASE THE AGE WITH
21 COMFORT.
22 I THINK WE SHOULD DO EVERYTHING IN MODERATION.
23 AND I THINK THAT WE SHOULD SMOKE IN MODERATION, WE
24 SHOULD DRINK IN MODERATION, AND WE SHOULD EAT IN
25 MODERATION. MORE PEOPLE KILL THEMSELVES BY DIGGING

5639

1 THEIR GRAVES WITH THEIR TEETH THAN BY ANY OTHER THING
2 WE KNOW OF.
3 AND I WOULD SAY THAT IF AN INDIVIDUAL IS
4 WORRIED ABOUT HIS CIGARETTE SMOKING, THAT HE SHOULD GO
5 TO HIS FAMILY PHYSICIAN, AND HE SHOULD TAKE THE ADVICE
6 OF HIS FAMILY PHYSICIAN AS TO WHETHER HE'S SMOKING TOO
7 MUCH, OR WHETHER HE SHOULD STOP SMOKING.

8 THIS IS DR. CHARLES CAMERON --

9 THE COURT: LET ME INTERRUPT YOU FOR JUST A
10 MINUTE. IF Y'ALL WOULD STAND BY AND REMAIN SEATED.

11 (WHEREUPON, A BREAK WAS TAKEN.)

12 THE COURT: REMAIN SEATED. PLEASE EXCUSE MY
13 INTERRUPTION.

14 MISS JOHNSON, YOU MAY CONTINUE.

15 MS. FLORENCE JOHNSON: THANK YOU, YOUR HONOR.

16 Q. (BY MS. FLORENCE JOHNSON) IN THE VIDEOTAPE
17 THAT WE SAW, DR. NORRELL, WITH DR. HESS DISCUSSING WHAT
18 APPEARS TO BE HIS VIEW ABOUT SMOKING, THAT A, PEOPLE
19 SHOULD SMOKE IN MODERATION IF THEY CHOOSE; AND B, THAT
20 THERE'S NO LINK BETWEEN SMOKING AND LUNG CANCER. THAT
21 IS SOMETHING THAT WE NECESSARILY HAVE TO VIEW IN
22 CONTEXT WITH THE PART THAT WAS PLAYED EARLIER WITH
23 DR. WYNDER DISCUSSING THE FACT THAT HE THINKS THAT
24 THERE IS AN ASSOCIATION BETWEEN SMOKING AND LUNG
25 CANCER.

5640

1 SO IN TERMS OF CONTEXT, WE HAVE TO VIEW THE
2 WHOLE OF THE TAPE IN CONTEXT. IS THAT A FAIR
3 STATEMENT?

4 A. WELL, CERTAINLY THE EDITORS OF SEE IT NOW HAVE
5 ATTEMPTED TO SHOW PEOPLE WITH OPINIONS ON VARIOUS SIDES
6 OF THE QUESTION AS IT EXISTED IN 1955, YES.

7 Q. AND IF I UNDERSTAND YOUR EARLIER TESTIMONY ON
8 DIRECT ON THURSDAY, YOU INDICATED THAT IT WAS NECESSARY
9 TO USE AS MANY SOURCES AS YOU CAN TO UNDERSTAND
10 HISTORY, AND IT'S NECESSARY, AS WELL, TO LOOK AT
11 DEBATES IF THERE ARE DEBATES IN AN AREA THAT YOU'RE
12 RESEARCHING. IS THAT A FAIR STATEMENT?

13 A. YES.

14 Q. SO THE EVIDENCE IN THIS CASE INDICATES THAT
15 THERE WAS A DEBATE IN 1955 WITH REGARD TO WHETHER
16 SMOKING, IN FACT, CAUSED LUNG CANCER. IS THAT A FAIR
17 STATEMENT?

18 A. IN 1955, YES, THERE WAS A DEBATE --

19 Q. THANK YOU, DOCTOR.

20 A. -- PRESENTED --

21 Q. THANK YOU, DOCTOR. YOU'VE ANSWERED MY
22 QUESTION.

23 MS. FLORENCE JOHNSON: IF I COULD HAVE THE
24 WHOLE OF THE TAPE MARKED, YOUR HONOR, AS THE NEXT
25 NUMBERED EXHIBIT.

5641

1 MR. HANTHORN: NO OBJECTION TO MARKING IT.
2 (WHEREUPON, EXHIBIT NO. 215
3 WAS MARKED.)

4 THE SHERIFF: EXHIBIT 215.

5 Q. (BY MS. FLORENCE JOHNSON) EARLIER I ASKED YOU,
6 DOCTOR, IF YOU HAD HEARD OF THE TOBACCO INSTITUTE, AND
7 YOU INDICATED THAT YOU HAD.

8 WHY DID YOU NOT HAVE THE OCCASION TO LOOK AT
9 ANY PRESS RELEASES COMING FROM THE TOBACCO INSTITUTE?

10 A. WELL, I LOOKED AT WHAT WAS IN THE PUBLIC

11 RECORD, WHAT THE PUBLIC WAS READING, AND THE PRESS
12 RELEASES OF THE TOBACCO INSTITUTE WERE NOT PUBLISHED IN
13 THE READERS' DIGEST, OR THE NEW YORK TIMES, OR THE
14 COMMERCIAL APPEAL.
15 Q. WERE THEY PUBLISHED IN THE NEW YORK TIMES?
16 A. I DON'T -- THE NEW YORK TIMES RAN ARTICLES, AND
17 SOME OF THE ARTICLES THEY INCLUDED COMMENT FROM THE
18 TOBACCO INDUSTRY. BUT NEWSPAPERS TYPICALLY DID NOT, DO
19 NOT RUN PRESS RELEASES VERBATIM. THEY MAY USE THEM AS
20 A BASIS TO ASK QUESTIONS, BUT THEY --
21 I DID NOT SEE, IN ANY OF MY RESEARCH, ANY PRESS
22 RELEASES RUN JUST AS PRESS RELEASES.
23 Q. BUT YOU WOULD HAVE OCCASION TO COME ACROSS THEM
24 AS PART OF ANOTHER STORY, IF I UNDERSTAND YOUR
25 TESTIMONY?

5642

1 A. NO. I CAME ACROSS STORIES THAT HAD COMMENTS
2 AND OPINIONS OF PEOPLE IN THE -- WORKING FOR TOBACCO
3 COMPANIES, BUT I DID NOT SEE ANYTHING THAT WAS
4 SPECIFICALLY IDENTIFIED AS COMING OUT OF A PRESS
5 RELEASE FROM THE TOBACCO INSTITUTE.
6 Q. SO IF, TO FOLLOW UP ON THAT DISCUSSION, IF YOU
7 CAME ACROSS A COMMENT, SAY, FROM THE PRESIDENT OF RJR
8 THAT WAS MENTIONED IN AN ARTICLE, DID YOU GO AND LOOK
9 FOR THE COMMENTS OF THAT PRESIDENT TO GIVE YOU THE
10 CONTEXT OF THE STORY?
11 A. I LOOKED AT THE STORY THAT THE -- THAT INCLUDED
12 THE COMMENT FROM THE TOBACCO INDUSTRY SPOKESPERSON, BUT
13 I DIDN'T -- AND THAT WAS THE -- THAT WAS THE EVIDENCE
14 THAT I WAS USING, WAS THE EVIDENCE THAT WAS AVAILABLE
15 TO THE PUBLIC AT LARGE.
16 Q. SO YOU DIDN'T GO ANY FURTHER THAN THE STORY
17 THAT YOU WOULD HAVE FOUND, PERHAPS, IN A MAGAZINE OR A
18 NEWSPAPER, IF I UNDERSTAND YOUR TESTIMONY?
19 A. WELL, I WENT ON TO THE NEXT STORY THAT
20 INFLUENCED WHAT THE PUBLIC KNEW.
21 Q. IN TERMS OF LOOKING FURTHER INTO THAT STORY TO
22 DISCOVER WHETHER THERE WAS A DEBATE, YOU DIDN'T LOOK
23 FURTHER INTO THE STORY?
24 YOU SAW THE STORY, IF THERE WAS A REFERENCE
25 FROM, SAY, THE PRESIDENT OF RJR, YOU JUST MOVED ON TO

5643

1 THE NEXT STORY, CORRECT?
2 A. YES, AND WHEN I --
3 Q. DOCTOR, I MEAN, IS THE ANSWER TO MY QUESTION
4 YES, THAT YOU MOVED TO THE NEXT STORY?
5 A. WELL, I CAN'T GIVE YOU A YES OR NO ANSWER
6 SPECIFICALLY TO YOUR QUESTION.
7 THE QUESTION -- THE NEWSPAPERS, MAGAZINES, THE
8 WHOLE BODY OF INFORMATION THAT WAS AVAILABLE TO THE
9 PUBLIC WAS WHAT I LOOKED AT. WITHIN THAT BODY OF
10 PUBLIC INFORMATION THERE WERE DIFFERING OPINIONS ABOUT
11 WHAT WAS TRUE OR NOT TRUE AT THE TIME. THAT'S WHAT I
12 LOOKED AT.
13 Q. BUT IN TERMS OF DELVING INTO THE DIFFERING
14 OPINIONS THAT MAY HAVE BEEN PRESENT IN ONE STORY, YOU
15 DIDN'T GO FORWARD AND LOOK AT THE DIFFERENCE, YOU MOVED
16 TO THE NEXT STORY?
17 A. YES, THAT'S WHERE I LOOKED FOR, THE NEXT -- FOR
18 TO -- THAT'S WHERE I LOOKED TO DETERMINE IF, WHO WAS
19 WINNING THE DEBATE, OR WHAT NEW EVIDENCE WAS COMING
20 FORWARD.
21 Q. SO YOU MOVED TO THE NEXT STORY IS THE ANSWER TO

22 MY QUESTION?
23 A. WELL, MY ANSWER TO THE QUESTION --
24 Q. DR. NORRELL, AND THIS IS ONLY AN ATTEMPT TO TRY
25 TO MOVE THIS ALONG, AND IT'S NOT AN ATTEMPT TO ARGUE
5644
1 WITH YOU.
2 MY QUESTION IS VERY SIMPLE, THAT IF YOU CAME
3 ACROSS AN ARTICLE IN A NEWSPAPER AND YOU SAW THAT THERE
4 WERE PERHAPS DIFFERING OPINIONS, DID YOU WANT TO GO
5 FIND OUT WHAT THE DIFFERING OPINION WAS WITHIN THE
6 STORY?
7 IF THERE WAS A COMMENT FROM AN RJR PRESIDENT,
8 YOU DIDN'T TO GO FIND OUT ABOUT THE COMMENT? YOU
9 SIMPLY NOTICED THAT IT WAS THERE IN THE STORY AND THEN
10 MOVED TO THE NEXT STORY TO FINISH YOUR RESEARCH, IF I
11 UNDERSTAND YOUR TESTIMONY?
12 A. WELL, MY ANSWER IS THAT, YES, I DID KEEP GOING
13 TO --
14 Q. THANK YOU. AND THAT'S EXACTLY THE ANSWER I'M
15 LOOKING FOR, YES, YOU DID KEEP GOING. THANK YOU,
16 DOCTOR.
17 AS WE TALK ABOUT THIS UNDERSTANDING, OR IDEA OF
18 WHAT THE PUBLIC WAS AWARE OF, IS THERE A DATE ON WHICH
19 YOU ARE INDICATING TO THIS JURY THAT THE PUBLIC WAS
20 AWARE AND SHOULD HAVE KNOWN OF WHAT THE RISK WAS OF
21 SMOKING AND HEALTH? A SPECIFIC DATE?
22 A. I THINK THAT THE -- MY RESEARCH INDICATES THAT
23 THE AMERICAN PUBLIC HAS KNOWN SINCE THE BEGINNING OF
24 THIS COUNTRY THAT -- WHICH IS COINCIDENTAL WITH THE USE
25 OF TOBACCO, THAT THERE WAS HEALTH RISK ASSOCIATED WITH
5645
1 USING TOBACCO.
2 Q. ARE YOU PLACING A DATE ON THAT?
3 SO AT THE BEGINNING OF THIS COUNTRY BEING 1776,
4 OR THE BEGINNING OF THE COUNTRY BEING AS FAR BACK AS
5 YOU INDICATED IN YOUR DIRECT TESTIMONY?
6 A. IN MY DIRECT TESTIMONY I BEGAN BY TALKING ABOUT
7 THE EXPERIENCES OF COLUMBUS'S PEOPLE WHEN THEY
8 ENCOUNTERED TOBACCO USE BY THE INDIANS, AND THEY TOOK
9 BACK TO EUROPE. AND FROM THAT POINT FORWARD THERE WAS
10 CONTROVERSY OVER THE USE OF TOBACCO, AND SUGGESTIONS
11 THAT TOBACCO WAS BAD FOR YOUR HEALTH, AND THAT IT WAS
12 ADDICTIVE OR HABIT FORMING.
13 Q. SO YOU'RE PUTTING THAT AS FAR BACK AS COLUMBUS?
14 A. YES.
15 Q. AND IF I REMEMBER MY HISTORY, IS THAT AROUND
16 1492?
17 A. YES, MA'AM.
18 Q. ON DIRECT TESTIMONY YOU DISCUSSED CERTAIN
19 TENNESSEE STATUTES AND TENNESSEE CASES THAT YOU
20 REVIEWED. IS THAT CORRECT? MY UNDERSTANDING IS
21 CORRECT?
22 A. YES.
23 Q. DO YOU ALSO KNOW, OR DID YOU COME ACROSS IN
24 YOUR RESEARCH AN ITEM IN TENNESSEE LAW WHERE
25 CORPORATIONS ARE NECESSARILY TREATED THE SAME AS A
5646
1 PERSON IS IN THE EYES OF THE LAW? THAT A CORPORATION
2 CAN BE SUED JUST LIKE A PERSON CAN?
3 MR. HANTHORN: YOUR HONOR, I'M GOING TO OBJECT
4 TO THIS ON GROUNDS OF RELEVANCE.
5 THE COURT: WELL, WHAT IS THE RELEVANCE OF A
6 CORPORATION BEING TREATED AS A PERSON?

7 MS. FLORENCE JOHNSON: YOUR HONOR, IF THIS
8 WITNESS IS DISCUSSING THE KNOWLEDGE OF THE PUBLIC, I
9 WANT HIM TO EXPLAIN IF THERE IS A DIFFERENCE BETWEEN
10 THE KNOWLEDGE A PERSON AND THE KNOWLEDGE OF A
11 CORPORATION, AND ARE THEY BOTH NECESSARILY ENCOMPASSED
12 IN HIS DEFINITION OF PUBLIC.

13 THE COURT: OVERRULED.

14 Q. (BY MS. FLORENCE JOHNSON) CAN YOU ANSWER THE
15 QUESTION, DOCTOR?

16 A. COULD YOU RESTATE THE QUESTION FOR ME?

17 Q. CERTAINLY.

18 ARE YOU AWARE THAT CORPORATIONS ARE TREATED
19 JUST LIKE A PERSON IS IN THE EYES OF THE LAW IN THE
20 STATE OF TENNESSEE?

21 A. I'M NOT A LAWYER, NO. I CAN'T SAY THAT I
22 UNDERSTAND THE DISTINCTION THERE.

23 Q. BUT YOU DID DO RESEARCH WITH REGARD TO
24 TENNESSEE CASES AND TENNESSEE STATUTES AND STATUTES OF
25 OTHER STATES, IN ARKANSAS AND MISSISSIPPI, WITH REGARD

5647

1 TO WHAT THOSE STATUTES SAID ABOUT, SAY, HEALTH,
2 CORRECT?

3 A. YES, I LOOKED AT THE LAW, WHAT THE LAW SAID
4 ABOUT HEALTH, ABOUT CIGARETTES, AND WHETHER THEY WERE
5 LEGAL OR NOT. HOW THEY SHOULD BE SOLD. I DID NOT LOOK
6 AT THE HISTORY OF CORPORATIONS IN TENNESSEE.

7 Q. IN YOUR ASSIGNMENT TO INVESTIGATE WHAT THE
8 PUBLIC KNEW, DID YOU ALSO INCLUDE THE KNOWLEDGE OF
9 CORPORATIONS OF THE TOBACCO INDUSTRY IN WHAT THE PUBLIC
10 KNEW?

11 A. WELL, IN MY RESEARCH I DID LOOK AT WHAT THE
12 PUBLIC KNEW ABOUT THE PRODUCTION OR THE USE OF TOBACCO,
13 WHETHER -- BUT I DIDN'T -- ACTUALLY, I DIDN'T FIND
14 INFORMATION THAT ADDRESSED PARTICULARLY, IF I
15 UNDERSTAND YOUR QUESTION, WHAT THE PUBLIC KNEW ABOUT
16 CORPORATIONS.

17 Q. I DON'T THINK YOU DO UNDERSTAND MY QUESTION.

18 A. ALL RIGHT.

19 Q. YOU DIDN'T INCLUDE THE KNOWLEDGE OF THE TOBACCO
20 INDUSTRY, ABOUT WHAT THEY KNEW ABOUT THE HEALTH RISKS
21 OF SMOKING IN THIS DISCUSSION ABOUT WHAT THE PUBLIC,
22 THE AMERICAN PEOPLE, THE COMMON PEOPLE, AS YOU
23 MENTIONED IN YOUR DIRECT, WHAT THEY KNEW?

24 A. OH, YES. BECAUSE WHAT THE TOBACCO INDUSTRY
25 REPORTED THEY KNEW, OR DID NOT KNOW, IS THE SAME AS

5648

1 WHAT THE AMERICAN CANCER SOCIETY -- IT'S ALL IN THE
2 SAME RECORD, IN THE NEWSPAPERS, IN THE MAGAZINES AND SO
3 FORTH.

4 WHAT THE TOBACCO -- WHAT THE TOBACCO INDUSTRY,
5 WHAT THEIR POSITIONS WERE AT THE TIME THAT IT WAS
6 REPORTED PUBLICALLY, I STUDIED.

7 Q. SO YOU WOULD NECESSARILY, IF I UNDERSTAND YOUR
8 DISTINCTION EARLIER, THE DATE THAT THE PUBLIC SHOULD
9 HAVE KNOWN THAT TOBACCO WAS NECESSARILY BAD FOR YOU,
10 THAT SMOKING COULD CAUSE YOUR DEATH, IS SOMETHING THAT
11 GOES BACK AS FAR AS 1492, AND NECESSARILY THE TOBACCO
12 INDUSTRY WOULD HAVE HAD THIS KNOWLEDGE AS WELL?

13 A. YES, THE TOBACCO INDUSTRY, I BELIEVE, KNEW WHAT
14 THE PUBLIC KNEW. I INCLUDED THEIR -- THE PEOPLE WHO
15 WORKED IN THE TOBACCO INDUSTRY, IN THE LARGER PUBLIC OF
16 THE UNITED STATES. THEY WERE AWARE, AS I THINK MOST
17 PEOPLE, NEARLY EVERYBODY WAS AWARE.

18 Q. IN YOUR EARLIER DISCUSSION YOU MENTIONED
19 CERTAIN SLANG REFERENCES FOR A CIGARETTE, A LITTLE
20 WHITE SLAVER, A COFFIN NAIL, AND A CANCER STICK.
21 ARE THOSE --
22 A. YES.
23 Q. -- THE ONES THAT YOU MENTIONED?
24 A. I DID MENTION THOSE, YES.
25 Q. THERE ARE OTHER SLANG REFERENCES FOR A
5649
1 CIGARETTE, ARE THERE NOT, DOCTOR?
2 A. I'M SURE -- THERE MAY BE.
3 Q. ARE YOU FAMILIAR WITH ANY OTHERS? ARE YOU
4 FAMILIAR WITH THE SLANG REFERENCE FAG TO MEAN
5 CIGARETTE?
6 A. YES.
7 Q. ARE YOU FAMILIAR WITH, AS WELL, THE TERM SMOKE
8 FOR A CIGARETTE?
9 A. YES.
10 Q. YOU DIDN'T INCLUDE THOSE IN YOUR DISCUSSION
11 WITH THE JURY, DID YOU?
12 A. NO.
13 Q. IS THERE A REASON THAT YOU DIDN'T NECESSARILY
14 INCLUDE THE OTHER SLANG TERMS OF FAG AND SMOKE, BUT YOU
15 INCLUDED CANCER STICK AND COFFIN NAIL?
16 A. WELL, THEY DID NOT ADDRESS THE HEALTH RISK THAT
17 IS IMPLIED ABOUT THESE OTHER -- THAT IS IMPLIED IN
18 CANCER STICK, NICOTINE FING, LITTLE WHITE SLAVER.
19 COFFIN NAIL.
20 THEY DIDN'T CARRY -- THOSE DID NOT CARRY THE
21 SAME MESSAGE, ALTHOUGH THE ONES THAT I DID USE WERE
22 COMMONLY USED, AND ARE STILL COMMONLY USED.
23 Q. WAS FAG A COMMONLY USED TERM FOR CIGARETTE?
24 A. YES.
25 Q. WAS SMOKE A COMMONLY USED TERM FOR CIGARETTE?
5650
1 A. YES.
2 Q. I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS
3 TRIAL EXHIBIT 57, AND ASK YOU TO TAKE A LOOK AT WHERE
4 THERE IS A GREEN STICKY, POST-IT NOTE.
5 A. YES.
6 Q. YOU DISCUSSED EARLIER, DR. NORRELL, LIFE
7 MAGAZINE AND ITS IMPORTANCE TO THE AMERICAN PUBLIC, DID
8 YOU NOT?
9 A. YES.
10 Q. IN THE DOCUMENT THAT'S IN FRONT OF YOU, COULD
11 YOU DESCRIBE THE COVER OF THE DOCUMENT AND THEN THE
12 PLACE WHERE I ASKED YOU TO TURN TO?
13 A. THIS IS A LIFE MAGAZINE FROM SEPTEMBER THE
14 14TH, 1959, AND THE COVER IS A PICTURE OF THE FIRST
15 SEVEN AMERICAN ASTRONAUTS.
16 Q. AND THE PAGE THAT'S MARKED WITH A GREEN TAB,
17 THERE IS A PHOTOGRAPH OF TWO ASTRONAUTS IN THAT
18 PHOTOGRAPH, OF DONALD SLAYTON AND A VIRGIL GRISSOM.
19 A. YES.
20 Q. WHAT ARE THEY DOING IN THAT PHOTOGRAPH?
21 A. WELL, ONE OF THEM IS SMOKING, AND IT SAYS THAT
22 BOTH OF THEM ARE, QUOTE, TAKING TIME OUT FOR A SMOKE.
23 MS. FLORENCE JOHNSON: IF I COULD HAVE THE
24 PHOTOGRAPH, YOUR HONOR, PUBLISHED TO THE JURY.
25 MR. HANTHORN: NO OBJECTION.
5651
1 Q. (BY MS. FLORENCE JOHNSON) THIS IS THE CAPTION
2 OF WHAT YOU JUST READ. "AFTER A TIRING DAY, DONALD

3 SLAYTON AND VIRGIL GRISSOM TAKE TIME OUT FOR A SMOKE."
4 A. YES.
5 Q. SO THESE ARE TWO OF THE FIRST SEVEN AMERICAN
6 ASTRONAUTS HAVING A CIGARETTE?
7 A. YES.
8 Q. IN 1959.
9 SO AT LEAST IN TERMS OF 1959, DURING THE SAME
10 TIME FRAME THAT YOU MENTIONED CANCER STICK AND COFFIN
11 NAIL, SMOKE WAS AN EQUALLY POPULAR PHRASE FOR A
12 CIGARETTE?
13 A. WELL, I DON'T KNOW ABOUT EQUALLY POPULAR, BUT
14 IT WAS USED ALONG WITH CANCER STICK, COFFIN NAIL, FAG.
15 Q. WE DISCUSSED, OR YOU DISCUSSED, ADVERTISING AT
16 SOME LENGTH WHEN YOU WERE TALKING TO MR. HANTHORN AND
17 HE WAS ASKING SOME QUESTIONS WITH REGARD TO LIFE
18 MAGAZINE.
19 FOR INSTANCE, THE ADVERTISEMENTS AND PICTURES
20 THAT WENT INTO LIFE MAGAZINE WERE NECESSARILY SOMETHING
21 THAT THE PUBLIC AT LARGE WOULD HAVE HAD EXPOSURE TO.
22 IS THAT FAIR TO SAY?
23 A. YES.
24 Q. AND IN PARTICULAR, AN ARTICLE THAT DEALT WITH
25 THE FIRST SEVEN ASTRONAUTS IS SOMETHING THAT THE
5652
1 AMERICAN PUBLIC WOULD HAVE BEEN GREATLY INTERESTED IN.
2 IS THAT A FAIR STATEMENT?
3 A. I CERTAINLY WAS, YES.
4 Q. IT WAS A POPULAR STORY IN 1959.
5 A. YES.
6 Q. THE FACT THAT THE ASTRONAUTS, THESE FIRST SEVEN
7 ASTRONAUTS, WERE SUPPOSED TO BE SPECIMENS OF PHYSICAL
8 SUPERIORITY, THEY WERE SUPPOSED TO BE CONCERNED ABOUT
9 THEIR HEALTH. ARE THOSE FAIR STATEMENTS TO SAY? THAT
10 NASA WANTED THE AMERICANS TO BELIEVE THAT THESE
11 ASTRONAUTS WERE SOMETHING SPECIAL?
12 A. WELL, CERTAINLY NASA WANTED THEM TO BE VIEWED
13 AS SPECIAL PEOPLE, BECAUSE THEY WERE. THEY WERE HIGHLY
14 TRAINED, TECHNICAL PEOPLE IN FLYING AIRCRAFT.
15 WHETHER -- I DON'T KNOW THAT NASA REPRESENTED
16 THEM AS HEALTH SPECIMENS, ALTHOUGH YOU HAD TO BE
17 HEALTHY TO BE AN ASTRONAUT.
18 Q. SO YOU HAD TO BE HEALTHY TO BE AN ASTRONAUT?
19 A. YES.
20 Q. THIS PHOTOGRAPH THAT WE JUST MENTIONED WITH
21 VIRGIL GRISSOM AND DONALD SLAYTON TAKING TIME OUT FOR A
22 SMOKE, NECESSARILY DOESN'T TELL US WHAT THESE
23 ASTRONAUTS, WHETHER THEY THOUGHT THAT SMOKING WAS
24 SOMETHING BAD, OR SMOKING WAS SOMETHING THAT WAS GOING
25 TO KILL YOU, DOES IT?
5653
1 A. NO.
2 Q. THE AMERICAN PUBLIC WOULDN'T HAVE HAD ANY IDEA,
3 FROM VIEWING THIS PICTURE WITH THE ASTRONAUTS WITH THEM
4 SMOKING, THAT SMOKING WAS NECESSARILY SOMETHING TO BE
5 VIEWED AS BAD OR HARMFUL FOR YOUR HEALTH, IF THE
6 ASTRONAUTS ARE ALLOWED TO DO IT?
7 A. NO, MA'AM, I CAN'T STATE THAT ASSUMPTION.
8 I THINK THAT WHILE THE AMERICAN PUBLIC COULD
9 LOOK AT THE PICTURE AND SAY, GEE, AN ASTRONAUT SMOKES,
10 THE AMERICAN PUBLIC WAS GETTING, FROM SO MANY OTHER
11 DIRECTIONS, THAT SMOKING WAS HARMFUL FOR YOU IN 1959,
12 AND HAD BEEN GETTING IT FOR TEN YEARS, THAT THE
13 AMERICAN PUBLIC WOULDN'T NECESSARILY DRAW A HEALTH

14 CONCLUSION FROM THAT PICTURE.
15 Q. YOU MADE A STATEMENT ON DIRECT EXAMINATION THAT
16 YOU FELT THAT THE ADVERTISING OF THE TOBACCO INDUSTRY
17 WAS NOT SOMETHING THAT WAS PARTICULARLY -- SOMETHING
18 THAT WOULD HAVE COUNTERACTED THIS VIEW THAT YOU FEEL
19 THAT THE PUBLIC HAD ABOUT SMOKING AS BEING BAD. IS
20 THAT A FAIR STATEMENT?
21 A. I BELIEVE WHAT I SAID WAS THAT I LOOKED AT
22 ADVERTISING, ADVERTISING AS PART OF THE INFORMATION
23 THAT WAS OUT THERE, BUT THAT THE ADVERTISING
24 INFORMATION WAS FAR SURPASSED BY THE NEGATIVE HEALTH
25 MESSAGE THAT WAS COMING FROM THE NEWS REPORTS.

5654

1 Q. WHEN YOU LOOKED AT THE ADVERTISING, DID YOU
2 NECESSARILY GO TO THE TOBACCO INDUSTRY AND ASK THEM HOW
3 MUCH MONEY THEY SPENT ON ADVERTISING?
4 A. NO, MA'AM.
5 Q. BUT YOU ARE AWARE, ARE YOU NOT, THAT
6 ADVERTISING BY THE TOBACCO INDUSTRY WAS A LARGE PART OF
7 THEIR BUDGET IN THE '50S AND THE '60S, UP UNTIL THE TIME
8 THAT ADVERTISING WAS ACTUALLY BANNED ON TELEVISION?
9 A. WELL, I DON'T KNOW WHAT PART OF IT IT WAS, BUT
10 THERE WERE LOTS OF ADS, AND I KNOW THAT THEY MUST HAVE
11 PAID A LOT OF MONEY FOR ADVERTISING, YES, MA'AM.
12 Q. BUT YOU, NECESSARILY, FEEL THAT THAT
13 ADVERTISING CAMPAIGN WAS NOT PARTICULARLY SUCCESSFUL?
14 A. WELL, I'M NOT AN EXPERT ON ADVERTISING.
15 WHAT I SAID, I BELIEVE, WAS THAT ADVERTISING
16 WAS OUT THERE. THE PUBLIC WAS EXPOSED TO ADVERTISING,
17 ALONG WITH THE NEWS REPORTS OF THE HEALTH RISKS. AND
18 MY ASSESSMENT OF WHAT THE PUBLIC WAS AWARE OF SUGGESTED
19 TO ME THAT THE NEWS REPORTS HAD A GREATER INFLUENCE ON
20 PUBLIC LEVELS OF AWARENESS, AND OF BELIEF, THAN
21 ADVERTISING DID.
22 Q. THAN ADVERTISING DID.
23 IF I COULD HAVE WHAT'S PREVIOUSLY BEEN MARKED
24 AS EXHIBITS 6, 27, AND 28.
25 THE COURT: WHY DON'T WE GO AHEAD, SHERIFF, AND

5655

1 TAKE A TEN-MINUTE RECESS, AND THEN COUNSEL CAN PULL THE
2 EXHIBITS AND PICK OUT THOSE THAT WILL BE NECESSARY FOR
3 THE TESTIMONY.
4 MS. FLORENCE JOHNSON: THANK YOU, YOUR HONOR.
5 THE SHERIFF: ALL RISE.
6 (WHEREUPON, A RECESS WAS TAKEN.)
7 THE COURT: ALL RIGHT, LAWYERS, ARE WE READY
8 FOR THE JURY?
9 MS. FLORENCE JOHNSON: YES, YOUR HONOR.
10 MR. HANTHORN: YES, YOUR HONOR.
11 (WHEREUPON, THE JURY WAS
12 SEATED IN THE JURY BOX.)
13 THE COURT: ALL RIGHT. THANK YOU, LADIES AND
14 GENTLEMEN.
15 MISS JOHNSON, YOU MAY CONTINUE.
16 MS. FLORENCE JOHNSON: THANK YOU, YOUR HONOR.
17 Q. (BY MS. FLORENCE JOHNSON) DR. NORRELL, AS YOU
18 MENTIONED, YOU'RE NOT AN ADVERTISING EXPERT, BUT YOU
19 DID MENTION ON DIRECT THAT YOU REVIEWED SOME
20 ADVERTISING TO DRAW YOUR CONCLUSION THAT YOU DIDN'T
21 FEEL THAT THE ADVERTISING WAS SOMETHING THAT OVERRODE
22 YOUR OPINION ABOUT THE PUBLIC KNOWLEDGE ON THE SMOKING,
23 THE ASSOCIATION BETWEEN SMOKING AND HEALTH RISKS.
24 I'M GOING TO ASK YOU, HOWEVER, TO REVIEW SOME

25 ADVERTISING AND THE EXHIBITS THAT HAVE PREVIOUSLY BEEN
5656

1 MARKED, AND ASK YOU, FIRST OF ALL, IF YOU'VE EVER SEEN
2 THESE BEFORE.

3 A. MISS JOHNSON, I DON'T REMEMBER IF I'VE SEEN
4 THESE EXACT ADS, BUT I, OF COURSE, HAVE SEEN ADS
5 SIMILAR TO THEM.

6 Q. IF I COULD HAVE THOSE ADS, AND WE'LL START WITH
7 THE FIRST ONE, PLEASE.

8 THE FIRST ONE, MARKED AS EXHIBIT 6, IS AN AD
9 REGARDING THE BUFFALO SOLDIERS FOR MARLBORO CIGARETTES.
10 THIS IS AN AD THAT YOU INDICATE THAT YOU DON'T
11 REMEMBER WHETHER YOU'VE SEEN IT BEFORE, BUT THIS IS AN
12 AD THAT'S NECESSARILY --
13 GO TO PAGE TWO PLEASE.

14 IT'S GOT PICTURES OF THE BUFFALO SOLDIERS ON
15 HORSES, AND IT DISCUSSES THEIR BRAVERY IN BATTLE.
16 IT'S DIFFICULT TO SEE. IF YOU CAN MOVE IN ON
17 THE TEXT, PLEASE.

18 IT INDICATES THAT THE BUFFALO SOLDIERS DID MORE
19 THAN FIGHT, THEY GUARDED WAGON TRAINS. AND IT MAKES
20 REFERENCE TO THE FACT THAT THEY FOUNDED AND BUILT TOWNS
21 LIKE FT. SILL, AND LAWTON, OKLAHOMA.

22 AND THEN WE HAVE THE INDICATION OF THE MARLBORO
23 CIGARETTES AT THE BOTTOM.

24 DR. NORRELL, YOU INDICATED THAT YOU HAVEN'T
25 SEEN THIS AD, BUT WITH REGARD TO HAVING SOLDIERS

5657
1 PICTURED WITH CIGARETTES, ARE SOLDIERS NECESSARILY
2 INDIVIDUALS THAT SHOULD BE HEALTHY?

3 A. I'M SORRY, ARE SOLDIERS THAT SHOULD BE WHAT,
4 MA'AM?

5 Q. DO YOU NECESSARILY AGREE THAT SOLDIERS ARE
6 NECESSARILY INDIVIDUALS THAT SHOULD BE HEALTHY, AND
7 HEALTH CONSCIOUS?

8 A. YES.

9 Q. DO YOU THINK THAT THIS AD AT ALL MAKES ANY SORT
10 OF HEALTH CLAIMS WITH REGARD TO THE BUFFALO SOLDIERS?

11 A. WELL, AS I LOOK AT THE AD, IT JUST -- IT SEEMS
12 TO ME THAT THEY'RE TRYING TO TELL THE STORY OF THE
13 BUFFALO SOLDIERS, AND HOPE THAT PEOPLE THAT ARE
14 INTERESTED IN THE BUFFALO SOLDIERS WILL PAY ATTENTION
15 TO THE MARLBORO PICTURE IN THE RIGHT CORNER.
16 BEYOND THAT, I DON'T SEE A HEALTH CLAIM.

17 Q. IS THIS AD NECESSARILY A MISLEADING AD?
18 THESE BUFFALO SOLDIERS WERE NOT AROUND AT THE
19 SAME TIME MARLBORO CIGARETTES WERE, WERE THEY?

20 A. I DON'T BELIEVE SO.

21 Q. I'M GOING TO MOVE TO THE NEXT AD. AND THIS IS
22 JACKIE ROBINSON.
23 IN TERMS OF POPULARITY FOR TODAY'S INDIVIDUAL,
24 WOULD JACKIE ROBINSON BE AKIN, NECESSARILY, TO MICHAEL
25 JORDAN?

5658
1 A. YES. WELL, IF YOU'RE TALKING ABOUT JACKIE
2 ROBINSON IN THE 1940S AND 1950S, YES. HE WAS
3 CLEARLY -- YOU COULD DRAW AN ANALOGY TO, CERTAINLY
4 AMONG AFRICAN-AMERICAN, THAT JACKIE ROBINSON WAS.

5 Q. AND IT INDICATES, "FOR A TREAT INSTEAD OF A
6 TREATMENT . . . I RECOMMEND GOLD CIGARETTES." IS THAT
7 CORRECT?

8 A. I'M SORRY, I CAN'T READ IT.

9 Q. IF YOU COULD BLOW THAT UP, PLEASE?

10 CAN YOU READ THIS NOW?
11 A. YES.
12 Q. AND IT SAYS "FOR A TREAT INSTEAD OF A
13 TREATMENT . . . I RECOMMEND GOLD CIGARETTES."
14 A. YES, THAT'S WHAT IT SAYS.
15 Q. IF AN INDIVIDUAL READ THIS AD, DR. NORRELL,
16 WOULD THEY NECESSARILY THINK THAT IT MADE SOME SORT OF
17 HEALTH CLAIM WITH REGARD TO THE USE OF THE WORD
18 TREATMENT?
19 A. I DON'T KNOW, MISS JOHNSON, WHAT THEY MIGHT
20 THINK. THERE MIGHT -- A PERSON MIGHT DRAW THAT FROM
21 IT, BUT THERE MIGHT BE OTHER TREATMENTS THAT ARE NOT
22 HEALTH RELATED THAT IT COULD REFER TO.
23 Q. SO THE POSSIBILITY EXISTS THAT THERE COULD BE
24 SOME HEALTH CONNOTATION WITH THIS AD --
25 A. YES.

5659
1 Q. -- IF I UNDERSTAND YOUR TESTIMONY?
2 A. WELL, I'M NOT AN EXPERT ON ADVERTISEMENT.
3 Q. I UNDERSTAND THAT.
4 A. BUT THERE MIGHT BE A HEALTH CONNOTATION DRAWN
5 FROM THAT.
6 Q. THANK YOU.
7 JUST ONE FINAL AD. AND THIS IS MICKEY MANTLE,
8 IS IT NOT?
9 A. THAT'S WHAT IT SAYS, YES, MA'AM.
10 Q. AND IF WE WERE GOING TO DRAW A CORRELATION TO
11 MICKEY MANTLE IN THE '50S TO AN ATHLETE TODAY, HE WOULD
12 BE A MARK MCGUIRE, A HOME-RUN CHAMPION; IS THAT
13 CORRECT?
14 A. YES, THAT MIGHT BE AN ANALOGY.
15 Q. AND IF YOU COULD BLOW UP AT THE BOTTOM, PLEASE.
16 IT INDICATES THAT MICKEY MANTLE BELIEVES THAT
17 VICEROYS ARE RICHER TASTING AND SMOOTHER BY FAR. "FROM
18 MY VERY FIRST PUFF, MAN, IT WAS VICEROYS FOR ME."
19 MICKEY MANTLE, AGAIN, IS A SPORTS FIGURE, AN
20 ATHLETE, SOMEBODY THAT SHOULD BE CONCERNED ABOUT
21 HEALTH. IS THAT A FAIR STATEMENT?
22 A. WELL, HE WASN'T VERY CONCERNED ABOUT HEALTH IN
23 REALITY, I GUESS, BUT THE PRESUMPTION MAY BE THAT
24 ATHLETES SHOULD BE CONCERNED ABOUT HEALTH.
25 Q. THANK YOU, DR. NORRELL.

5660
1 AS YOU'VE MENTIONED SEVERAL TIMES, YOU'RE NOT
2 NECESSARILY AN EXPERT WITH REGARD TO ADVERTISING. HAVE
3 YOU BEEN MADE AWARE THAT AN ADVERTISING EXPERT
4 TESTIFIED IN THIS CASE?
5 A. NO.
6 Q. YOU'RE NOT FAMILIAR WITH DR. RICHARD POLLAY,
7 ARE YOU?
8 A. NO.
9 Q. LET ME REPRESENT TO YOU THAT THE TESTIMONY HAS
10 BEEN, FROM DR. POLLAY, THAT THE ADVERTISING OF THE
11 TOBACCO INDUSTRY HAS BEEN WILDLY SUCCESSFUL. ONE OF
12 THE MOST SUCCESSFUL CAMPAIGNS IN HISTORY.
13 AS YOU MENTIONED, YOU ARE NOT AN ADVERTISING
14 EXPERT.
15 THE COURT: EXCUSE ME.
16 MR. HANTHORN: I'M GOING TO OBJECT TO THIS TYPE
17 OF CHARACTERIZATION OF SELECTED PIECES OF DR. POLLAY'S
18 TESTIMONY, PARTICULARLY SINCE IT'S LEAVING OUT THE
19 CROSS EXAMINATION WHICH SHOWED THE LACK OF BASIS FOR
20 MANY OF THE TYPES OF THE STATEMENTS POLLAY WAS MAKING.

21 THE COURT: OVERRULED.
22 Q. (BY MS. FLORENCE JOHNSON) IF I REPRESENTED TO
23 YOU THAT THAT'S BEEN THE TESTIMONY FROM DR. POLLAY,
24 THAT THE TOBACCO INDUSTRY LAUNCHED A VERY SUCCESSFUL
25 ADVERTISING CAMPAIGN, ONE OF THE MOST SUCCESSFUL IN
5661
1 HISTORY, YOU WOULD NECESSARILY DEFER TO THE OPINION OF
2 THAT EXPERT, WOULD YOU NOT? INDICATING THAT YOU ARE
3 NOT AN EXPERT WITNESS WITH REGARD TO WHETHER OR NOT
4 THESE ADS, AS WE SAW ON THE SCREEN, WERE SUCCESSFUL?
5 A. WELL, I MEAN --
6 Q. AND THAT'S REALLY A YES OR NO, AND THEN YOU CAN
7 BE ALLOWED TO EXPLAIN DR. NORRELL.
8 A. WELL, I CAN'T ANSWER YES OR NO BECAUSE I DON'T
9 KNOW. I CAN'T AGREE WITH THE PRESUMPTION.
10 I DON'T KNOW DR. POLLAY, AND I DON'T KNOW
11 WHETHER HE'S AN ADVERTISING EXPERT OR NOT.
12 Q. BUT IN TERMS OF YOUR OPINION THAT THE
13 ADVERTISING CAMPAIGN THAT YOU REFERENCED, THAT YOU
14 LOOKED THROUGH ADVERTISING AND YOU FELT IN YOUR OWN
15 OPINION THAT THAT ADVERTISING WAS NOT SUCCESSFUL, WHAT
16 DID YOU DO TO DETERMINE THAT THE ADVERTISING WAS NOT
17 SUCCESSFUL? DID YOU DO YOUR OWN SURVEY?
18 MR. HANTHORN: I'M GOING TO OBJECT TO THE
19 QUESTION AGAIN, AS MISSTATING THE WITNESS'S PRIOR
20 TESTIMONY.
21 THE COURT: OVERRULED.
22 MR. HANTHORN: HE DIDN'T SAY THE ADVERTISING
23 WASN'T SUCCESSFUL.
24 THE COURT: OVERRULED.
25 Q. (BY MS. FLORENCE JOHNSON) DID YOU DO YOUR OWN
5662
1 SURVEY, DR. NORRELL?
2 A. NO.
3 Q. DID YOU DO EXTENSIVE RESEARCH IN TERMS OF
4 ADVERTISING, AND LOOK TO WHETHER OR NOT THE PUBLIC
5 EXPRESSED ANY VIEWS ON WHAT THEY FELT ABOUT THE
6 ADVERTISING CAMPAIGN IN THE TOBACCO INDUSTRY?
7 A. WELL, I LOOKED AT THE ADVERTISING, AND I LOOKED
8 AT WHAT HAPPENED TO PUBLIC AWARENESS AT THE SAME TIME
9 THAT THE ADVERTISEMENTS WERE COMING FAST AND FURIOUS.
10 I LOOKED AT THE POLLS THAT INDICATED THAT THE
11 PUBLIC WAS BELIEVING THE HEALTH STUDIES, AND I HAVE
12 SEEN POLLS THAT SHOW THE PUBLIC'S GENERAL SKEPTICISM
13 AND NEGATIVISM ABOUT ADVERTISING AND ITS TRUTHFULNESS.
14 Q. SO, BASICALLY, AS I UNDERSTAND YOUR TESTIMONY,
15 TO DRAW YOUR CONCLUSION ABOUT WHETHER ADVERTISING WAS
16 IN FACT SUCCESSFUL OR NOT, IS BASICALLY THE SAME
17 RESEARCH THAT YOU DID? YOU LOOKED AT WHAT WAS OUT
18 THERE, AND IF THE PUBLIC EXPRESSED SOME SORT OF
19 NEGATIVE VIEW, YOU THEN DREW THE CONCLUSION THAT
20 ADVERTISING WAS UNSUCCESSFUL?
21 A. I DREW THE CONCLUSION THAT ADVERTISING WAS NOT
22 AS SUCCESSFUL IN SHAPING PUBLIC VIEWS ABOUT HEALTH RISK
23 ASSOCIATED WITH SMOKING AS THE HEALTH STUDIES THAT WERE
24 COMING FROM THE AMERICAN CANCER SOCIETY, THE U.S.
25 PUBLIC HEALTH SERVICE, THE SURGEON GENERAL OF THE
5663
1 UNITED STATES.
2 Q. AND AGAIN, JUST TO PUT THIS IN CONTEXT,
3 HISTORICAL CONTEXT, YOU'RE NOT AN ADVERTISING EXPERT,
4 SO THAT'S YOUR OPINION?
5 A. YES, MA'AM.

6 Q. I'M GOING TO ASK YOU, DR. NORRELL, TO REVIEW
7 FOR ME A BOOK THAT MR. HANTHORN ASKED YOU ABOUT, A
8 TEXTBOOK THAT YOU INDICATED WAS IN USE IN THE SCHOOLS.
9 THIS IS THE AMERICAN HEALTH SERIES, MODERN WAYS
10 TO HEALTH.
11 WHERE DID YOU INDICATE, DR. NORRELL, THAT THAT
12 BOOK WAS IN USE? IN WHAT STATE WAS THIS BOOK IN USE?
13 A. I'M SORRY, I DON'T REMEMBER PRECISELY WHICH
14 STATE.
15 Q. YOU DON'T RECALL WHAT STATE IT WAS IN USE?
16 A. NO. I LOOKED AT A LOT OF HEALTH TEXTBOOKS.
17 Q. I'M SORRY?
18 A. I LOOKED AT A LOT OF HEALTH TEXTBOOKS. I
19 REMEMBER THIS TITLE, BUT I DON'T REMEMBER WHICH STATE
20 IT CONNECTED TO.
21 Q. ARE YOU LOOKING AT PAGE 118 AND 119?
22 A. YES.
23 Q. IN THAT TEXT THEY SHOW WHAT PURPORTS TO BE AN
24 ATHLETE, DO THEY NOT?
25 A. YES. IT'S A HURDLER.

5664

1 Q. AND IN THAT TEXT -- THIS IS NOT A PORTION OF
2 THE TEXT YOU READ, INCIDENTLY, TO THE JURY EARLIER, WAS
3 IT?
4 A. I DON'T BELIEVE SO.
5 Q. AT PAGE 118 IT INDICATES THAT SMOKING
6 CIGARETTES, OR USING TOBACCO IN OTHER FORMS, DECREASES
7 A PERSON'S ENDURANCE, SKILL, ATHLETIC ABILITY. DO YOU
8 SEE THAT?
9 A. YES, MA'AM.
10 Q. IT ALSO INDICATES THAT SOMEONE WHO'S INVOLVED
11 IN SPORTS SHOULD NECESSARILY NOT SMOKE, DOES IT NOT?
12 A. IT SAYS, COACHES URGE ATHLETES NOT TO SMOKE,
13 NOTING THAT SMOKING PREVENTS THEM FROM DOING THEIR
14 BEST. THAT'S ONE OF THE THINGS IT SAYS.
15 Q. SO, IN TERMS OF YOUR EARLIER TESTIMONY WHERE
16 YOU INDICATED THAT THIS WAS THE TYPE OF INFORMATION
17 THAT WAS PUT OUT IN SCHOOLS, WHETHER IT BE IN TENNESSEE
18 OR MISSISSIPPI OR ARKANSAS, THIS WAS THE TYPE OF
19 INFORMATION THAT WAS OUT, THAT ATHLETES SHOULD
20 NECESSARILY NOT SMOKE BECAUSE IT IMPAIRED THEIR
21 ABILITY; IS THAT CORRECT?
22 A. WELL, THAT'S ONE OF THE THINGS THAT IT SAYS,
23 BUT --
24 Q. AND THAT'S THE SPECIFIC PORTION THAT I'M ASKING
25 YOU ABOUT. AND I'M ASKING YOU ABOUT THAT IN RELATION

5665

1 TO THE ARTICLES AND ADS THAT WE SAW WITH REGARD TO
2 ATHLETES, NECESSARILY JACKIE ROBINSON AND MICKEY
3 MANTLE, SMOKING.
4 THOSE THINGS SEEMED TO BE IN CONTRADICTION WITH
5 ONE ANOTHER, DO THEY NOT?
6 A. YES.
7 Q. AND BOTH OF THOSE THINGS WERE OUT IN THE PUBLIC
8 KNOWLEDGE, IF, AS YOU INDICATED, THAT THAT BOOK WAS
9 THERE BEING TAUGHT IN TENNESSEE, AND MISSISSIPPI, AND
10 ARKANSAS, AND THEN THE PUBLIC WAS, AS WELL, EXPOSED TO
11 THESE ADS. SO THOSE THINGS CONTRADICT ONE ANOTHER?
12 A. YES, MA'AM. BUT I REALLY THINK WE'RE MUCH MORE
13 LIKELY TO BELIEVE THE SCHOOL TEXTBOOK THAN WE ARE
14 ADVERTISING.
15 Q. THANK YOU, DR. NORRELL.
16 MS. FLORENCE JOHNSON: I BELIEVE THAT THAT,

17 YOUR HONOR, IS ALREADY MARKED INTO EVIDENCE, BUT I
18 WOULD ASK THAT THAT SPECIFIC PAGE BE MARKED AS THE NEXT
19 NUMBERED EXHIBIT.
20 MR. HANTHORN: NO OBJECTION TO MAKING A
21 PHOTOCOPY OF THOSE TWO PAGES OF THAT TEXTBOOK, IF WE
22 CAN HAVE A PHOTOCOPY TO DO IT FROM SO WE DON'T HAVE TO
23 BREAK THE SPINE OF THE BOOK.
24 (WHEREUPON, EXHIBIT NO. 216
25 WAS MARKED.)

5666

1 THE SHERIFF: EXHIBIT 216.
2 Q. (BY MS. FLORENCE JOHNSON) YOU TESTIFIED
3 EARLIER WITH REGARD TO CERTAIN THINGS THAT AFFECTED
4 CIGARETTES, NAMELY CERTAIN THINGS LIKE WARNINGS THAT
5 WENT ON CIGARETTES IN ABOUT 1966, IF I REMEMBER YOUR
6 TESTIMONY.
7 A. YES, MA'AM.
8 Q. I'M GOING TO HAND YOU A DOCUMENT AND ASK,
9 PLEASE, IF YOU CAN REVIEW THIS DOCUMENT.
10 THIS IS A CHART ABOUT THE CONSUMPTION OF
11 CIGARETTES, AND IT'S NECESSARILY --
12 IS THIS A CHART THAT YOU'VE EVER SEEN BEFORE,
13 DOCTOR?
14 A. NO, MA'AM.

15 MS. FLORENCE JOHNSON: I'M NOT GOING TO OFFER
16 THIS INTO EVIDENCE, YOUR HONOR, IT'S JUST IN TERMS TO
17 AID THE DISCUSSION.
18 IF I COULD HAVE THE DOCUMENT BACK, PLEASE.

19 MR. HANTHORN: WELL, NOW, YOUR HONOR, AGAIN,
20 I'M SORRY, I MAY HAVE MISUNDERSTOOD. I THOUGHT THAT IF
21 THE DOCUMENT WAS NOT GOING TO BE OFFERED THAT IT WAS
22 NOT TO BE DISPLAYED. THAT MAY HAVE BEEN A
23 MISAPPREHENSION ON MY PART.

24 THE COURT: WELL, I THINK THAT IF IT'S NOT AN
25 EXHIBIT IT SHOULDN'T BE DISPLAYED.

5667

1 MS. FLORENCE JOHNSON: IF I COULD JUST HAND IT
2 BACK TO THE WITNESS THEN, YOUR HONOR.

3 Q. (BY MS. FLORENCE JOHNSON) IN THAT CHART,
4 DOCTOR, IT PURPORTS TO CHART THE USE OF CIGARETTES OVER
5 A COURSE OF TIME FROM 1900 TO 1994, DOES IT NOT?

6 MR. HANTHORN: YOUR HONOR, I DON'T KNOW WHETHER
7 WE NEED TO APPROACH OR NOT, BUT I CERTAINLY OBJECT TO
8 NOW ASKING THE WITNESS TO, IN EFFECT, READ A CHART
9 THAT'S NOT IN EVIDENCE.

10 IF HE'S BEING ASKED AS TO, AGAIN, HIS GENERAL
11 KNOWLEDGE ABOUT WHEN CIGARETTES, AS A HISTORICAL MATTER
12 LEADING UP UNTIL 1969, WHICH WAS THE SUBJECT MATTER OF
13 HIS TESTIMONY, WERE CONSUMED, HE HAS THE EXPERTISE,
14 HE'S PERFECTLY CAPABLE OF DOING THAT. BUT TO ASK HIM
15 TO START READING THAT CHART THAT GOES INTO 1994 JUST TO
16 HAVE HIM READ IT, I OBJECT TO.

17 MS. FLORENCE JOHNSON: YOUR HONOR, I DON'T WANT
18 DR. NORRELL TO READ THE CHART. I JUST WANT TO ASK HIM
19 WHAT SPECIFIC THINGS EFFECTED THE CONSUMPTION OF
20 CIGARETTES.

21 HE'S ALREADY TESTIFIED THAT WARNINGS DID, I
22 WANT TO SEE IF HE CAN INDICATE ON THAT CHART WHERE THAT
23 EFFECT TOOK PLACE IN TERMS OF YEARS. THAT'S WHY THE
24 REFERENCE TO THE CHART GOING FROM 1900 TO 1994.

25 THE COURT: I THINK THAT WITHOUT IT BEING AN

5668

1 EXHIBIT, I HAVE TO SUSTAIN THE OBJECTION.

2 Q. (BY MS. FLORENCE JOHNSON) DR. NORRELL, YOU
3 INDICATED THAT AT ONE POINT WARNINGS WENT ON THE
4 CIGARETTE PACKAGES, DID YOU NOT?
5 A. YES, MA'AM.
6 Q. AND WHEN DID THAT OCCUR, AND WHAT YEAR WAS
7 THAT?
8 A. 1966.
9 Q. DO YOU KNOW WHETHER OR NOT THE TOBACCO INDUSTRY
10 SUPPORTED THOSE WARNINGS GOING ON CIGARETTE PACKAGES?
11 A. NO, I BELIEVE THEY OPPOSED IT.
12 Q. DID YOU COME ACROSS, IN YOUR RESEARCH, THE
13 REASON THAT THERE WAS OPPOSITION TO THE WARNINGS?
14 A. WELL, THERE WAS GENERALLY A VIEW, AMONG A LOT
15 OF PEOPLE, THAT THE WARNINGS WERE NOT NECESSARY BECAUSE
16 THE PUBLIC ALREADY KNEW OF THE HEALTH RISKS.
17 Q. WHAT I ASKED YOU SPECIFICALLY, DOCTOR, WAS, DID
18 YOU COME ACROSS, IN YOUR RESEARCH, THE REASON THAT THE
19 TOBACCO INDUSTRY DIDN'T FEEL THAT WARNINGS SHOULD BE
20 PLACED ON CIGARETTE PACKAGES?
21 A. AND AS I RECALL, THAT WAS THEIR POSITION.
22 Q. WHAT WAS THEIR POSITION, SIR?
23 A. THAT THE PUBLIC ALREADY WAS AWARE OF THE HEALTH
24 RISKS OF SMOKING.
25 Q. AND WHERE DID YOU COME ACROSS THIS INFORMATION
5669
1 THAT THAT WAS THE TOBACCO INDUSTRY'S FEELING?
2 A. WELL, THAT WAS A POSITION HELD BY -- THAT HAD
3 BEEN TAKEN BY THE SURGEON GENERAL OF THE UNITED STATES
4 IN 1957, AND BY THE NATIONAL HEALTH AND NATIONAL CANCER
5 INSTITUTE, AND BY THE AMERICAN MEDICAL ASSOCIATION. A
6 LOT OF PEOPLE WERE TAKING THAT POSITION. THE TOBACCO
7 INDUSTRY CITED THOSE, THOSE POSITIONS AS, YOU KNOW, AS
8 REASONS NOT TO DO IT.
9 Q. AND IN WHAT ARE YOU REFERENCING THAT YOU CAME
10 ACROSS THAT THE TOBACCO INDUSTRY SUPPORTED WHAT THE
11 AMERICAN MEDICAL ASSOCIATION SAID, OR THE AMERICAN
12 CANCER SOCIETY, WITH REGARD TO PLACING WARNINGS?
13 A. WELL, THAT'S MY RECOLLECTION FROM THE NEWS
14 REPORTS OF THE TIME.
15 Q. NEWS REPORTS THAT YOU DID NOT NECESSARILY BRING
16 WITH YOU TODAY, THAT INDICATED THAT THE TOBACCO
17 INDUSTRY OPPOSED THE WARNINGS? YOU DIDN'T BRING THOSE
18 WITH YOU, DID YOU?
19 A. I -- WE HAVE BOXES OF 2,000 DOCUMENTS. I
20 BELIEVE IT'S IN THERE SOMEWHERE, BUT I COULDN'T POINT
21 TO IT SITTING HERE RIGHT THIS MOMENT WHICH DOCUMENT IT
22 IS.
23 Q. YOU INDICATED, AS WELL, THAT YOU FOUND OUT THAT
24 THE PUBLIC, IN YOUR OPINION, FELT THAT THEY KNEW WHAT
25 THE HEALTH RISKS OF SMOKING WERE. AND YOU DISCUSSED A
5670
1 1964 HARRY REASONER REPORT WITH REGARD TO THE
2 DISCUSSION ON THE SURGEON GENERAL'S REPORT. DO YOU
3 REMEMBER THAT?
4 A. YES.
5 Q. IS THAT THE SEGMENT THAT WE WATCHED?
6 A. YES, MA'AM.
7 Q. IN THAT SEGMENT HARRY REASONER DISCUSSES, OR
8 MAKES THE COMMENT ABOUT FILTERS. DO YOU RECALL WHAT
9 MR. REASONER SAID ABOUT FILTERS?
10 A. AS I RECALL, THERE WAS DISCUSSIONS GOING ON
11 STILL ABOUT WHETHER FILTERS DID, IN FACT, MAKE
12 CIGARETTES HEALTHIER, AND WOULD -- AND I BELIEVE HE

13 SAID SOMETHING LIKE THE RESEARCH WAS ONGOING TO CREATE
14 THE FILTER THAT WOULD MAKE THE SAFE CIGARETTE.
15 Q. I'M GOING TO HAND YOU A LIFE MAGAZINE FROM 1959
16 THAT'S BEEN PREVIOUSLY MARKED FOR IDENTIFICATION AS
17 EXHIBIT 56.
18 MR. HANTHORN: WITH THE UNDERSTANDING THAT IT'S
19 NOT COMING IN, AGAIN, BUT THAT IT'S BEING OFFERED FOR
20 IDENTIFICATION AS WELL, NO OBJECTION.
21 MS. FLORENCE JOHNSON: YOUR HONOR, I'M ACTUALLY
22 GOING TO INTRODUCE THIS INTO EVIDENCE ONCE DR. NORRELL
23 HAS TAKEN A LOOK AT THE AD. I MEAN, IT WAS ORIGINALLY
24 INTRODUCED FOR IDENTIFICATION.
25 THE COURT: WELL, WE'LL JUST LOOK AND SEE AT
5671
1 THE APPROPRIATE TIME WHEN IT'S INTRODUCED.
2 MS. FLORENCE JOHNSON: I DIDN'T WANT TO MISLEAD
3 THE COURT THAT I WASN'T GOING TO OFFER IT.
4 Q. (BY MS. FLORENCE JOHNSON) IN YOUR HAND,
5 DR. NORRELL, YOU HAVE AN AD FOR VICEROY CIGARETTES; IS
6 THAT CORRECT?
7 A. IS THIS THE ONE YOU'RE TALKING ABOUT?
8 Q. IS THAT AN AD FOR VICEROY CIGARETTES?
9 A. YES, MA'AM.
10 Q. AND IT INDICATES IN THAT AD FROM -- AND THAT'S
11 FROM LIFE MAGAZINE IN 1959?
12 A. YES.
13 Q. IT INDICATES THAT THE VICEROY AT THAT TIME HAD
14 WHAT WAS CALLED A THINKING MAN'S FILTER, DID IT NOT?
15 A. YES.
16 Q. DO YOU KNOW, OR CAN YOU GIVE AN OPINION ON WHAT
17 WAS MEANT BY THE THINKING MAN'S FILTER?
18 A. WELL, AGAIN, I'M NOT AN ADVERTISING EXPERT.
19 THE SUGGESTION IS THAT THINKING -- IT'S -- WHAT
20 IT SAYS, THAT THINKING MEN LIKE THIS FILTER. THAT'S AT
21 LEAST WHAT THE MAKERS OF BROWN & WILLIAMSON COMPANY IS
22 REPRESENTING HERE, OR SUGGESTING. TRYING TO GET PEOPLE
23 TO BELIEVE.
24 Q. AND SO IF YOU SMOKED VICEROY CIGARETTES, IT
25 NECESSARILY WOULD IMPLY THAT YOU SOMEHOW THOUGHT ABOUT
5672
1 THE CHOICE AND YOU CAME UP WITH THAT AS THE APPROPRIATE
2 CHOICE FOR YOU TO SMOKE, AS A CHARACTERIZATION OF AN
3 INTERPRETATION OF THAT AD?
4 A. WELL, THAT MIGHT BE AN INTERPRETATION OF THE
5 AD.
6 Q. THANK YOU, DR. NORRELL.
7 MS. FLORENCE JOHNSON: I'D OFFER THIS, YOUR
8 HONOR, AS THE NEXT NUMBERED EXHIBIT.
9 MR. HANTHORN: YOUR HONOR, IF IT WAS CUMULATIVE
10 DURING DR. POLLAY'S TESTIMONY, IT'S STILL CUMULATIVE.
11 AND I BELIEVE THAT WAS THE REASON THAT IT WAS
12 ORIGINALLY NOT OFFERED, IN LIGHT OF THE NUMBER OF OTHER
13 CIGARETTE ADS THAT WERE OFFERED DURING THE TESTIMONY OF
14 DR. POLLAY.
15 I WOULD CONTINUE TO OBJECT ON THAT GROUND.
16 THE COURT: WELL, ARE WE TALKING ABOUT THE
17 WHOLE MAGAZINE, OR ARE WE TALKING ABOUT THE ONE PAGE?
18 MS. FLORENCE JOHNSON: JUST THE MAGAZINE PAGE
19 THAT INDICATES THE VICEROY AD, YOUR HONOR.
20 THE COURT: OVERRULED.
21 (WHEREUPON, EXHIBIT NO. 217
22 WAS MARKED.)
23 THE SHERIFF: EXHIBIT 217.

24 MS. FLORENCE JOHNSON: IF I COULD HAVE THIS
25 PUBLISHED TO THE JURY, PLEASE.
5673
1 Q. (BY MS. FLORENCE JOHNSON) AND IN THIS
2 ADVERTISEMENT, AS WE MENTIONED, THERE IS A PICTURE, IF
3 YOU CAN ZOOM IN PLEASE.
4 THE COMMENT, "THE MAN WHO THINKS FOR HIMSELF
5 KNOWS ONLY VICEROY HAS A THINKING MAN'S FILTER . . .
6 THE SMOKING MAN'S TASTE." IS THAT WHAT THAT READS?
7 A. YES, MA'AM.
8 Q. OKAY. BACK UP SO WE CAN SEE THE WHOLE AD.
9 THANK YOU.
10 YOU INDICATED EARLIER, WHEN I ASKED YOU ABOUT
11 THE TOBACCO INSTITUTE, THAT YOU WERE FAMILIAR WITH WHAT
12 THE TOBACCO INSTITUTE WAS, BUT YOU INDICATED THAT YOU
13 HAD NOT COME ACROSS ANY PRESS REPORTS OR RELEASES FROM
14 THE TOBACCO INSTITUTE; IS THAT CORRECT?
15 A. WHAT I SAID WAS THAT I HAD NOT SEEN PRESS
16 RELEASES. I CERTAINLY HAVE SEEN THE PRESS REPORTS OF
17 STATEMENTS MADE BY THE TOBACCO INSTITUTE.
18 Q. AND WHERE DID YOU COME ACROSS THESE PRESS
19 REPORTS OF THE STATEMENTS MADE BY THE TOBACCO
20 INSTITUTE?
21 A. IN NEWSPAPERS AND IN MAGAZINES.
22 Q. YOU CAME ACROSS, AS WELL AS STATEMENTS MADE BY,
23 AS WE MENTIONED EARLIER, PRESIDENTS OF TOBACCO
24 COMPANIES AND COMMENTS BY THE TOBACCO INDUSTRY IN
25 GENERAL, DID YOU NOT?

5674
1 A. YES.
2 Q. I'M GOING TO HAND YOU A DOCUMENT FROM THE NEW
3 YORK TIMES AND ASK YOU, IS THIS SOMETHING YOU CAME
4 ACROSS IN YOUR RESEARCH?
5 A. YES.
6 Q. IN THIS ARTICLE IT INDICATES THAT MR. PAUL
7 HAHN, THE PRESIDENT OF AMERICAN TOBACCO, FELT AS
8 THOUGH, OR CHARACTERIZED A LOT OF "LOOSE TALK" RECENTLY
9 PUBLISHED ABOUT SCIENTIFIC REPORTS SUGGESTING THAT
10 THERE WAS A LINK BETWEEN CIGARETTE SMOKING AND A RISE
11 IN THE INCIDENT OF LUNG CANCER. DO YOU SEE THAT?
12 A. YES.
13 Q. IN THE SECOND PARAGRAPH?
14 A. YES, MA'AM.
15 Q. AND IT GOES ON TO INDICATE THAT, "IT HAS NOT
16 BEEN PROVEN THAT CIGARETTES HAVE EVER CAUSED A SINGLE
17 CASE OF LUNG CANCER. A STATEMENT BY MR. HAHN OF THE
18 AMERICAN TOBACCO COMPANY." SO THIS IS SOMETHING THAT
19 YOU CAME ACROSS, AND NECESSARILY IS INDICATIVE OF THE
20 FACT THAT THERE WAS A DEBATE WITH REGARD TO WHETHER OR
21 NOT THERE WAS A LINK BETWEEN SMOKING AND LUNG CANCER IN
22 1953?
23 AND I'LL REPEAT --
24 A. WAS THAT THE QUESTION? I COULDN'T HEAR IT.
25 Q. I'LL REPEAT IT.

5675
1 THIS ARTICLE THAT I'VE HANDED YOU FROM 1953
2 INDICATES, AT LEAST IN THE EYES OF AMERICAN TOBACCO
3 THERE WAS NO LINK BETWEEN SMOKING AND LUNG CANCER; IS
4 THAT CORRECT?
5 A. WELL, WHAT HE SAYS IS IT HAS NOT BEEN PROVED.
6 THAT'S WHAT THE MR. HAHN, PRESIDENT OF AMERICAN TOBACCO
7 SAYS, IT HAS NOT BEEN PROVED. THIS WAS AT THE -- AT
8 THE SAME TIME THAT THESE DOCTORS ARE PAINTING THE MICE

9 WITH THE TAR IN AN ATTEMPT TO GET SCIENTIFIC PROOF
10 RATHER THAN JUST A STATISTICAL ASSOCIATION, WHICH WAS
11 CLEARLY EMERGING. BUT HE SAYS -- WHAT HE SAYS IS THERE
12 IS NO SCIENTIFIC PROOF.
13 MS. FLORENCE JOHNSON: I'D LIKE THAT MARKED,
14 YOUR HONOR, AS THE NEXT NUMBERED EXHIBIT.
15 MR. HANTHORN: NO OBJECTION.
16 (WHEREUPON, EXHIBIT NO. 218
17 WAS MARKED.)
18 THE SHERIFF: EXHIBIT 218.
19 Q. (BY MS. FLORENCE JOHNSON) AND IN THIS AREA
20 WHERE I WAS READING, MR. HAHN CHARACTERIZED AS A LOT OF
21 "LOOSE TALK" RECENTLY PUBLISHED SCIENTIFIC REPORTS
22 SUGGESTING THAT THERE WAS A LINK BETWEEN CIGARETTE
23 SMOKING AND A RISE IN INCIDENCE OF LUNG CANCER."
24 THAT'S WHERE I WAS READING, SIR?
25 A. YES, MA'AM.

5676

1 Q. THANK YOU.
2 I'M GOING TO HAND YOU ANOTHER DOCUMENT, SIR,
3 AND ASK IF YOU CAN IDENTIFY THIS AS SOMETHING THAT YOU
4 CAME ACROSS IN YOUR RESEARCH.
5 DO YOU KNOW WHAT THAT DOCUMENT IS THAT YOU HAVE
6 IN YOUR HAND?
7 A. IT LOOKS LIKE A PRESS RELEASE WRITTEN,
8 PURPORTED TO HAVE BEEN WRITTEN BY GEORGE V. ALLEN,
9 PRESIDENT OF THE TOBACCO INSTITUTE.
10 Q. AT THE TOP OF PAGE ONE IT INDICATES THAT IT IS
11 BEING RELEASED IN WASHINGTON AND NEW YORK. IS THAT
12 CORRECT? IN A PARENTHETICAL REFERENCE?
13 MR. HANTHORN: YOUR HONOR, AGAIN, IT'S BEEN
14 IDENTIFIED AS A PRESS RELEASE. THE WITNESS HAS ALREADY
15 TESTIFIED THAT HE DIDN'T REVIEW PRESS RELEASES. I'M
16 GOING TO OBJECT TO THIS LINE OF INQUIRY AS IRRELEVANT,
17 AND AGAIN OBJECT TO REPEATED READINGS FROM A DOCUMENT
18 THE WITNESS HASN'T SEEN, IN ATTEMPTING TO USE HIM
19 SIMPLY TO PUBLISH A DOCUMENT.
20 HE CAN CERTAINLY BE ASKED IF HE SAW IT, HE CAN
21 CERTAINLY BE ASKED IF HE SAW SOMETHING IN STORIES OF
22 THE TIME THAT REFLECTED IT, BUT TO SIMPLY PUT PRESS
23 RELEASE AFTER PRESS RELEASE IN FRONT OF HIM AND SAY, DO
24 YOU SEE THESE, IS IMPROPER.
25 MS. FLORENCE JOHNSON: YOUR HONOR, THERE HAS

5677

1 BEEN TESTIMONY --
2 IF WE COULD APPROACH, PLEASE.
3 THE COURT: ALL RIGHT.
4 (WHEREUPON, THE FOLLOWING
5 DISCUSSION WAS HELD AT THE BENCH.)
6 MS. FLORENCE JOHNSON: YOUR HONOR, THERE HAS
7 BEEN TESTIMONY FROM THIS WITNESS ABOUT NUMEROUS PAPER
8 ARTICLES THAT HE READ, AND I DON'T BELIEVE HE SAID THAT
9 HE NEVER SAW ANY PRESS RELEASES. I THINK WHAT HE SAID
10 IS THAT HE CAME ACROSS SOME PRESS COMMENTS IN HIS
11 RESEARCH. THERE ARE ONLY THREE PRESS RELEASES THAT I
12 SEEK TO ASK HIM ABOUT, AND THAT IS THE FIRST ONE. SO I
13 BELIEVE THAT IT'S CERTAINLY RELEVANT TO, A, WHETHER HE
14 CAME ACROSS THEM; AND B, WHETHER OR NOT HE ACTUALLY
15 LOOKED AT THEM TO MAKE ANY SORT OF CONCLUSION WITH
16 REGARD TO THAT DEBATE THAT HE TALKED ABOUT, THAT THERE
17 WAS, IN FACT, NO DEBATE, AND I THINK THESE PRESS
18 RELEASES SHOW THAT IN FACT THERE WAS A DEBATE.
19 THE COURT: WELL, I DON'T THINK THAT'S RELEVANT

20 TO HIS TESTIMONY. JUST AS MR. HANTHORN SAYS, YOU
21 CAN'T, IN THE DUE -- IF IT'S AN EXHIBIT OR SOMETHING
22 ALREADY, I THINK YOU CAN INTRODUCE IT. I MEAN, YOU CAN
23 ASK HIM ABOUT IT IF IT'S IN THERE.
24 IF IT'S NOT AN EXHIBIT, THEN I DON'T -- I DON'T
25 QUITE KNOW HOW YOU REALLY WANT TO SHOW TWO THINGS, I

5678

1 GUESS. ONE, THAT THERE WAS A DEBATE. THAT IT WAS A --
2 THE DOCUMENT BEGINS TO COME TO HAVE SOME EVIDENTIARY
3 BASIS TO IT, FOR IT TO MAKE THAT STATEMENT.
4 TWO, YOU WANT, IN ORDER TO SHOW THAT,
5 CONTRADICT OR IMPEACH HIS STATEMENT PRESUMED THAT THERE
6 WAS SOME UNIVERSAL SENSE ABOUT SMOKING, CHALLENGING HIS
7 CREDIBILITY.
8 BUT I THINK THE FIRST THING YOU'VE GOT TO DO IN
9 THAT REGARD IS TO ESTABLISH, IS TO GET THE DOCUMENT
10 INTO EVIDENCE, AND I JUST DON'T UNDERSTAND THAT -- HOW
11 YOU CAN JUST PULL IT OUT.
12 THIS COULD GO ON FOR -- I'M NOT SAYING THAT
13 IT'S TIME, I'M JUST USING IT AS AN EXAMPLE. WE CAN GO
14 ON FOR DAYS JUST PULLING OUT DOCUMENTS AND SAYING THIS
15 CONTRADICTS YOU, THIS CONTRADICTS YOU, THIS CONTRADICTS
16 YOU. BUT IF THE DOCUMENT IS NOT IN EVIDENCE, I DON'T
17 THINK YOU CAN DO THAT. NOW --
18 AND REALLY, I THINK IT'S ONLY marginally
19 RELEVANT ANYWAY. I MEAN, HE'S ALREADY SAID THAT HIS
20 SURVEY IS NOT THE IN-HOUSE PUBLIC RELATIONS ENGINE OF
21 THE INSTITUTE, BUT RATHER THE ACTUAL END PRODUCT IN
22 TERMS OF WHAT'S OUT THERE FOR THE PUBLIC TO CONSUME.
23 MS. FLORENCE JOHNSON: YOUR HONOR, THE
24 CONCERN -- WHAT THESE DOCUMENTS IS, IN FACT, THAT IT
25 SAYS THAT THEY WERE RELEASED IN THE PROCESS --

5679

1 THE COURT: I'M SORRY?
2 MS. FLORENCE JOHNSON: THE DOCUMENT, FOR
3 EXAMPLE, INDICATES THAT IT WAS, IN FACT, RELEASED IN
4 NEW YORK AND WASHINGTON, AND WHETHER OR NOT HE SAW IT
5 IN HIS RESEARCH IS WHAT I'M TRYING TO --
6 THE COURT: THAT'S NOT IN EVIDENCE. HOW DO WE
7 KNOW IT WAS RELEASED IN WASHINGTON? IT'S NOT IN
8 EVIDENCE NOW, BUT UNLESS THIS WITNESS IDENTIFIES IT AS
9 SOMETHING HE'S SEEN IN HIS RESEARCH AS HE DID WITH THE
10 FIRST DOCUMENT --
11 MR. HANTHORN: WELL, THE FIRST DOCUMENT, AGAIN,
12 WAS A NEWSPAPER REPORT THAT HE DID SEE, AND HE SAW A
13 NEWSPAPER. BUT TO SAY THAT HE SAW PRESS RELEASES THAT
14 MAY NEVER HAVE BEEN PUBLISHED IS A WHOLE DIFFERENT
15 ISSUE.
16 THE COURT: I THINK YOU HAVE TO ESTABLISH A
17 FOUNDATION THAT WOULD MAKE THAT DOCUMENT SOMEHOW
18 ADMISSIBLE. THAT GOES RIGHT BACK TO WHAT I WAS SAYING.
19 MS. FLORENCE JOHNSON: WELL, THAT'S WHAT I'M
20 SEEKING TO DO, YOUR HONOR, BY HANDING IT TO THE WITNESS
21 AND ASKING IF HE'S SEEN IT. AND IF HE HASN'T SEEN IT,
22 THEN I'LL MOVE ON. BUT IF HE HAS SEEN IT, I THINK IT'S
23 INDEPENDENTLY ADMISSIBLE.
24 THE COURT: I THINK THAT THAT'S A DIFFERENT
25 QUESTION FROM WHAT YOU ASKED. YOU ASKED HIM WHETHER

5680

1 HE'S SEEN IT, AND NOW, OF COURSE, THAT IN AND OF ITSELF
2 DOES NOT ESTABLISH A FOUNDATION OF ITS ADMISSIBILITY,
3 EVEN IF HE SAYS HE'S SEEN IT. BUT I'M SIMPLY SAYING IF
4 YOU WANT TO USE THE DOCUMENT AS EVIDENCE, THEN WE NEED

5 TO ESTABLISH ITS ADMISSIBILITY.
6 MS. FLORENCE JOHNSON: MY FEELING WITH REGARD
7 TO ALL OF THESE DOCUMENTS, YOUR HONOR, IS THAT
8 CERTAINLY THEY'RE NOT HEARSAY DOCUMENTS, THEY GO TO THE
9 NOTICE OF THESE DEFENDANTS, AND NOTICE WITH REGARD --
10 THE COURT: THE COURT'S RULED ON IT NOW. I
11 THINK I'VE EXPLAINED MYSELF AS BEST I CAN.
12 (WHEREUPON, THE BENCH CONFERENCE
13 WAS CONCLUDED.)
14 Q. (BY MS. FLORENCE JOHNSON) THE DOCUMENT THAT'S
15 IN FRONT OF YOU, DR. NORRELL, IS THIS A DOCUMENT THAT
16 YOU'VE COME ACROSS IN YOUR RESEARCH?
17 A. NO.
18 Q. I CAN TAKE THAT DOCUMENT BACK.
19 I'M GOING TO HAND YOU ANOTHER DOCUMENT
20 ENTITLED, WHY WE'RE DROPPING THE NEW YORK TIMES, AND
21 ASK IF YOU YOU'VE COME ACROSS THIS IN YOUR RESEARCH,
22 DOCTOR.
23 A. SITTING HERE TODAY I DON'T RECALL SEEING IT.
24 Q. YOU'VE NEVER SEEN THIS DOCUMENT THAT'S BEEN
25 HANDED TO YOU?
5681
1 A. NO. IT'S NOT IDENTIFIED WHERE IT APPEARS, OR
2 WHAT IT IS.
3 Q. AND IT'S SOMETHING THAT YOU CLAIM THAT YOU'VE
4 NEVER SEEN BEFORE?
5 A. I DON'T RECALL SEEING IT.
6 Q. I'M GOING TO HAND YOU ANOTHER DOCUMENT.
7 THIS IS ENTITLED, ALL ADVERTISING SHOULD BE
8 TRUTHFUL. IT IS FROM ADVERTISING AGE MAGAZINE.
9 MR. HANTHORN: I'M GOING TO OBJECT TO THE
10 CHARACTERIZATION OF AN ADVERTISING AGE MAGAZINE.
11 MAYBE I MISSED IT, BUT I DON'T SEE THAT ON THE
12 DOCUMENT.
13 IF I'M WRONG, I CAN CERTAINLY SEE IT CORRECTLY.
14 Q. (BY MS. FLORENCE JOHNSON) IS THIS A
15 DOCUMENT --
16 THE COURT: WELL, THERE IS A OBJECTION AS TO
17 THE CHARACTERIZATION OF ITS BEING AN OLD AGE, AND I
18 DON'T HAVE THE DOCUMENT BEFORE ME SO I DON'T KNOW IF IT
19 SAYS THAT ON THE DOCUMENT OR NOT. DOES IT?
20 MS. FLORENCE JOHNSON: IT DOES. IT SAYS,
21 DOCUMENT REPRINTED WITH PERMISSION, NOVEMBER 10, 1969,
22 ADVERTISING AGE ANAL NEWSPAPER OF MARKETING.
23 I CAN HAND YOU THE DOCUMENT, YOUR HONOR.
24 THE COURT: WELL, I THINK THAT THE QUESTION IS
25 GOING TO REALLY GET TO FOUNDATION THAT HAS TO BE
5682
1 ESTABLISHED BY THE WITNESS.
2 MS. FLORENCE JOHNSON: IF I CAN GO FORWARD AND
3 ASK THIS WITNESS IF HE HAS KNOWLEDGE OF THIS.
4 Q. (BY MS. FLORENCE JOHNSON) DR. NORRELL, THE
5 DOCUMENT THAT HAS BEEN HANDED TO YOU, THIS IS A
6 DOCUMENT THAT YOU'VE COME ACROSS IN YOUR RESEARCH OF
7 SOME 2,000 DOCUMENTS WITH REGARD TO THIS CASE?
8 A. I DON'T RECALL SEEING IT, BUT IT'S NOT
9 IDENTIFIED WHERE IT APPEARED. IT SAYS IT'S REPRINTED
10 FROM THE ADVERTISING AGE. IT DOESN'T SAY WHAT THIS
11 PARTICULAR REPRINT -- WHERE THIS PARTICULAR REPRINT
12 APPEARED.
13 Q. IT'S NOT SOMETHING THAT YOU'VE EVER COME ACROSS
14 AS A PUBLICATION FOR THE TOBACCO INSTITUTE?
15 A. NO.

16 BUT I DON'T BELIEVE IT'S FROM ADVERTISING AGE.
17 THE COURT: WELL, IF YOU DON'T KNOW, YOU DON'T
18 KNOW, SO LET'S NOT SPECULATE.
19 MS. FLORENCE JOHNSON: IF I COULD HAVE THAT
20 DOCUMENT BACK, SHERIFF.
21 Q. (BY MS. FLORENCE JOHNSON) WHEN YOU DISCUSSED
22 EARLIER, DR. NORRELL, YOUR BELIEF THAT IN ORDER TO PUT
23 HISTORY IN CONTEXT YOU SHOULD LOOK AT ALL DOCUMENTS
24 AVAILABLE TO YOU, THOSE INDICATING WHETHER OR NOT THERE
25 WAS A DEBATE TO PUT HISTORY IN CONTEXT, WHAT, IN FACT,
5683
1 DID YOU LOOK AT?
2 A. WELL, I WAS DOING RESEARCH ON PUBLIC AWARENESS.
3 I LOOKED AT WHAT THE PUBLIC HAD ACCESS TO; NEWSPAPERS,
4 MAGAZINES, TELEVISION, POPULAR CULTURE.
5 Q. AND WHEN YOU SAY WHAT THE PUBLIC HAD ACCESS TO,
6 WHO ASKED YOU TO SPECIFICALLY LOOK AT WHAT THE PUBLIC
7 HAD ACCESS TO?
8 A. THE LAWYERS WHO HIRED ME.
9 Q. AND WHAT LAWYERS ARE THOSE, AND WHAT COMPANY
10 ARE THEY FROM, IF YOU RECALL?
11 A. WELL, THE ORIGINAL LAWYER WHO ASKED ME ABOUT
12 THIS WAS A LAWYER WHO WORKS FOR JONES, DAY, REAVIS &
13 PUGUE, AND I THINK HE REPRESENTS R.J. REYNOLDS.
14 Q. IS THAT THE DEFENDANT R.J. REYNOLDS THAT'S
15 INVOLVED IN THIS LAWSUIT HERE TODAY?
16 A. YES, I BELIEVE SO.
17 Q. HAVE YOU BEEN HIRED BY R.J. REYNOLDS BEFORE TO
18 RESEARCH THIS ISSUE? R.J. REYNOLDS SPECIFICALLY?
19 A. YES. ON -- THEY'VE ASKED ME OVER THE YEARS TO
20 LOOK AT SPECIFIC CASES, AND TO DO RESEARCH ON WHAT THE
21 PUBLIC KNEW. AND MANY TIMES R.J. REYNOLDS, OR JONES,
22 DAY, REAVIS, & POGUE WAS THE FIRM THAT ASKED ME TO DO
23 THE RESEARCH.
24 Q. DID THEY TELL YOU WHAT DOCUMENTS YOU SHOULD AND
25 SHOULD NOT LOOK AT?
5684
1 A. NO.
2 Q. THEY DIDN'T PUT ANY STRICTURES ON YOU WITH
3 REGARD TO LOOKING AT WHAT INFORMATION WAS IN THE PUBLIC
4 REALM?
5 A. NO.
6 Q. BUT THEY DIDN'T ALLOW YOU TO LOOK AT ANY OF
7 THEIR INTERNAL PAPERS OR DOCUMENTS?
8 A. THAT'S INCORRECT. THE --
9 Q. WELL, THEN CORRECT ME, PLEASE, SIR. WHAT
10 INTERNAL DOCUMENTS DID YOU LOOK AT FROM RJR?
11 A. I DID NOT LOOK AT INTERNAL DOCUMENTS, BUT I DID
12 NOT LOOK BECAUSE I WAS RESEARCHING WHAT THE PUBLIC
13 KNEW, AND THE PUBLIC DID NOT KNOW, DID NOT HAVE ACCESS
14 TO THE INTERNAL DOCUMENTS OF RJR OR OTHER TOBACCO
15 COMPANIES.
16 Q. WE DISCUSSED EARLIER, WHEN MR. HANTHORN WAS
17 ASKING YOU QUESTIONS, SINCE WE WERE TALKING ABOUT WHAT
18 THE PUBLIC KNEW AND WHEN, IN FACT, THEY KNEW IT, WE
19 DISCUSSED POLLS, POLLING INFORMATION THAT YOU
20 IDENTIFIED FROM THE GALLUP ORGANIZATION; IS THAT
21 CORRECT?
22 A. YES. GALLUP WAS ONE OF THE ORGANIZATIONS. I
23 ALSO LOOKED AT POLLS FROM THE ROPER ORGANIZATION, FROM
24 USA TODAY. SEVERAL.
25 Q. WHO CONDUCTED THE SURVEY THAT YOU DISCUSSED ON
5685

1 THURSDAY FROM SENIOR SCHOLASTIC?
2 A. THE SENIOR SCHOLASTIC POLLS WERE DONE ONE OF --
3 WERE DONE BY SENIOR SCHOLASTIC MAGAZINE, I BELIEVE.
4 Q. WHAT KIND OF POLLING ORGANIZATION IS ROPER &
5 ASSOCIATES?
6 A. IT'S AN ORGANIZATION THAT DOES PUBLIC OPINION
7 POLLS, LIKE GALLUP.
8 Q. I'M SORRY?
9 A. I BELIEVE IT'S LIKE GALLUP, IT DOES PUBLIC
10 OPINION POLLS.
11 Q. WHEN WE WERE TALKING ABOUT POLLS, YOU INDICATED
12 THAT THERE WAS -- THAT SOMETIMES BELIEF TRAVELS BEHIND
13 AWARENESS. IS THAT A FAIR STATEMENT?
14 A. I BELIEVE WHAT I SAID WAS THAT AWARENESS IS --
15 GENERALLY HAS VERY HIGH SORT OF PUBLIC RESPONSE,
16 BECAUSE PEOPLE ARE AWARE, WERE IN THIS CASE, AWARE OF
17 THE HEALTH RISKS ASSOCIATED, AND THAT AWARENESS
18 INCREASED, ESPECIALLY IN THE YEARS.
19 BELIEF TYPICALLY DEPENDS ON MORE THAN JUST
20 INFORMATION, IT DEPENDS ON PERSONAL CHOICE. AS
21 MR. REASONER AND OTHERS HAVE SAID, IT IS SHAPED BY MORE
22 THAN JUST KNOWLEDGE.
23 Q. YOU'RE NOT ANY SORT OF POLLSTER, ARE YOU, SIR?
24 A. NO.
25 Q. IN A DOCUMENT THAT MR. HANTHORN ASKED YOU TO
5686
1 REVIEW THAT'S BEEN MARKED AS EXHIBIT 153, A PUBLIC
2 AWARENESS OF WELL-KNOWN EVENTS, PERSONS, AND FACTS,
3 I'LL ASK YOU TO TAKE A LOOK AT THAT AGAIN, SIR.
4 IN THAT DOCUMENT THAT'S BEEN HANDED TO YOU,
5 WHAT IS THE FIRST QUESTION THAT GARNERED THE 90 PERCENT
6 RATING, IF COULD YOU READ THAT THE JURY, PLEASE?
7 A. I BELIEVE IT ASKED, HAVE YOU HEARD OR READ THAT
8 CIGARETTE SMOKING MAY CAUSE LUNG CANCER.
9 Q. I'M GOING TO ASK YOU, SIR, IF YOU COULD REFER
10 TO THIS CHART IN YOUR BINDER, IF YOU HAVE IT IN FRONT
11 OF YOU, AND I'LL TAKE THE CHART BACK THAT I HANDED YOU.
12 JUST SO WE'RE LOOKING AT THE RIGHT DOCUMENT.
13 A. IT'S NOT IN MY BINDER.
14 Q. I WILL HAND THIS BACK TO YOU, THEN. BUT I
15 WOULD LIKE YOU TO --
16 MR. HANTHORN: I'M SORRY, I MAY HAVE THAT ONE,
17 BECAUSE THE WITNESS WAS READING IT FROM YOU.
18 MS. FLORENCE JOHNSON: IF YOU WOULD JUST HAND
19 IT TO THE SHERIFF.
20 MR. HANTHORN: SURE.
21 Q. (BY MS. FLORENCE JOHNSON) ON THE FIRST
22 QUESTION THAT YOU INDICATE ON THIS CHART --
23 INCIDENTALLY, DID YOU PUT THIS CHART TOGETHER
24 OR DID YOUR ASSISTANTS PUT THIS CHART TOGETHER?
25 A. I DIRECTED THAT IT BE PUT TOGETHER, BUT NO, I
5687
1 DIDN'T MANUALLY MAKE IT.
2 Q. YOUR ASSISTANTS --
3 A. I SAID WHAT WAS TO BE -- WHAT I WANTED
4 INCLUDED; WHICH POLLS, WHICH BARS, WHICH QUESTIONS TO
5 INCLUDE IN IT.
6 Q. QUESTION NUMBER ONE WAS, HAVE YOU HEARD OR READ
7 THAT CIGARETTE SMOKING MAY CAUSE LUNG CANCER. AND
8 THAT'S FROM A GALLUP POLL IN 1954; IS THAT CORRECT?
9 A. YES, MA'AM.
10 Q. THE NEXT QUESTION GOES ON TO INDICATE, OR ASKED
11 WHETHER ANYBODY COULD NAME THE FIRST U.S. PRESIDENT,

12 WHETHER PEOPLE KNEW THAT TIGER WOODS WAS A YOUNG
13 PERSON, WAS A YOUNG GOLFER, WHETHER THEY KNEW WHO AL
14 GORE WAS. THEN THE QUESTION THAT, THE NUMBER FIVE
15 QUESTION IS, HAVE YOU READ OR HEARD ABOUT THE CIVIL
16 RIGHTS MARCH ON WASHINGTON. AND THEN THE FOLLOWING
17 QUESTION WAS, HAVE YOU HEARD OR READ ABOUT CPR.
18 IN LOOKING AT THIS CHART THAT'S BEEN MARKED AS
19 EXHIBIT 153, HOW DID YOU COME TO PICK THESE QUESTIONS
20 AS NECESSARILY APPROPRIATE TO GO ON THE GRAPH? HOW
21 DID YOU COME TO CHOOSE THESE QUESTIONS?
22 A. WELL, I WAS LOOKING FOR QUESTIONS THAT I
23 BELIEVED WERE COMMON KNOWLEDGE, AT LEAST COMMON
24 KNOWLEDGE AT PARTICULAR TIMES.
25 AND THAT, YOU KNOW, COULD NAME THE -- WHO COULD

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1 NAME THE FIRST PRESIDENT OF THE UNITED STATES, THAT
2 SEEMS TO ME A QUESTION THAT AMERICANS, THROUGHOUT TIME,
3 AT LEAST SINCE THE EARLY 1800S, SHOULD BE ABLE TO NAME.
4 89 PERCENT OF THEM COULD, IN 1983, COMPARED WITH THE 90
5 PERCENT WHO KNEW THAT -- HAD HEARD -- HAD READ THAT
6 CIGARETTE SMOKING CAUSED LUNG CANCER IN 1954.
7 I CHOSE THE ONE ON TIGER WOODS BECAUSE THIS
8 YOUNG MAN WAS ON THE NEWS SORT OF ALL WEEKEND LONG ONE
9 SPRING, IN THE SPRING OF 1997. THE USA TODAY HAPPENED
10 TO TAKE A POLL THAT FOUND THAT 75 PERCENT OF THE
11 AMERICAN PUBLIC KNEW WHO TIGER WOODS WAS. WHO HE WAS
12 AFTER -- SHORTLY AFTER HE HAD DONE ALL OF THAT.
13 THOSE ARE JUST SOME INDICATORS THAT SEEMED TO
14 ME LOTS OF PEOPLE WOULD COMMONLY HAVE KNOWN ABOUT AND
15 PARTICULAR TIMES IN THE RECENT PAST, TRY TO PROVIDE
16 SOME KIND OF COMPARISON TO THIS 1954 AWARENESS POLL ON
17 LUNG CANCER.
18 Q. LOOKING AT QUESTION -- COULD YOU ZOOM IN ON
19 QUESTION ONE, PLEASE?
20 ON THE QUESTION ITSELF.
21 HAVE YOU HEARD OR READ THAT CIGARETTE SMOKING
22 MAY CAUSE LUNG CANCER IS A FAIRLY BROAD QUESTION, IS IT
23 NOT? HEARD OR READ ENCOMPASSES A VERY LARGE CATEGORY
24 OF INDIVIDUALS.
25 THIS IS NOT A BELIEF QUESTION, IS IT, DR.

5689

1 NORRELL?
2 A. NO, IT IS AN AWARENESS QUESTION, BUT IT IS A
3 VERY SPECIFIC -- ASKED FOR A VERY SPECIFIC BIT OF
4 KNOWLEDGE ABOUT WHETHER THEY HAD HEARD THAT LUNG CANCER
5 WAS CAUSED BY SMOKING.
6 Q. IS IT THE SAME AS, COULD YOU NAME THE FIRST
7 U.S. PRESIDENT? IS THAT THE SAME KIND OF QUESTION?
8 A. I BELIEVE THAT IT GOES TO WHAT THE PUBLIC
9 COMMONLY KNEW ABOUT.
10 Q. IS IT THE SAME TYPE OF QUESTION?
11 A. IN MY -- YES, MA'AM. IN MY VIEW, IT WAS THE
12 SAME KIND OF QUESTION, AND -- OR I WOULDN'T HAVE PUT IT
13 IN THIS COMPARATIVE FRAMEWORK.
14 Q. COULD YOU GO INTO NUMBER FIVE, PLEASE?
15 THIS ASKED FOR SPECIFIC FACTS. COULD YOU NAME
16 THE PRESIDENT, DO YOU KNOW WHO TIGER WOODS IS, DO YOU
17 KNOW THAT AL GORE WAS THE PRESIDENT. THOSE ARE FACTUAL
18 QUESTIONS, AS OPPOSED TO THE NUMBER FIVE QUESTION AND
19 THE NUMBER SIX QUESTION, THAT HAVE TO DO WITH WHETHER
20 YOU'VE HEARD OR READ ANYTHING ABOUT THE CIVIL RIGHTS
21 MARCH OR ABOUT CPR.
22 AS IT APPEARS, LOOKING AT THIS GRAPH, ONE,

23 FIVE, AND SIX ARE THE ONLY ONES THAT ASK FOR THE SAME
24 TYPE OF INFORMATION, ARE THEY NOT, DR. NORRELL?
25 A. WELL, THEY'RE JUST PHRASED MORE CLOSELY, IT
5690
1 SEEMS TO ME, WHEREAS I THINK THEY ARE -- ALL OF THESE
2 QUESTIONS, ALL TEN OF THEM, ARE -- WERE QUESTIONS
3 DESIGNED TO FIND OUT JUST WHETHER PEOPLE HAD THIS LEVEL
4 OF GENERAL KNOWLEDGE, OR THIS SPECIFIC BIT OF GENERAL
5 KNOWLEDGE.
6 Q. SO WHAT YOUR -- AND DON'T LET ME INTERRUPT YOU,
7 DR. NORRELL.
8 IN YOUR ESTIMATION, THE WHOLE START -- PLEASE.
9 ALL OF THESE QUESTIONS NECESSARILY ASKED FOR
10 THE SAME INFORMATION ABOUT AWARENESS, AND NOT
11 SPECIFICALLY BELIEF. IS THAT YOUR TESTIMONY?
12 A. YES, I BELIEVE ALL OF THESE ARE AWARENESS
13 QUESTIONS.
14 Q. ALL OF THOSE ARE AWARENESS QUESTIONS. OKAY.
15 YOUR HONOR, IT'S 4:30.
16 THE COURT: I THINK THIS IS AN APPROPRIATE
17 TIME, SHERIFF, FOR US TO CALL IT A DAY AND COME BACK
18 TOMORROW.
19 AND, LADIES AND GENTLEMEN, REMEMBER NOT TO
20 DISCUSS THE CASE AMONG YOURSELVES OR WITH ANYONE ELSE,
21 AND SHERIFF WE SHALL COME BACK TOMORROW AT TEN.
22 (WHEREUPON, COURT WAS ADJOURNED
AT 4:30 P.M.)

23
* * *

24
25
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1 COURT REPORTER'S CERTIFICATE
2
3 STATE OF TENNESSEE
4
5 COUNTY OF SHELBY:
6
7 I, DEBRA A. DIBBLE, RPR, DO HEREBY CERTIFY:
8 1. THE FOREGOING TRANSCRIPT OF PROCEEDINGS WAS
9 TAKEN BEFORE ME AT THE TIME AND PLACE STATED IN THE
10 FOREGOING STYLED CAUSE WITH THE APPEARANCES AS NOTED;
11 2. BEING A COURT REPORTER, I THEN REPORTED THE
12 TRANSCRIPT OF PROCEEDINGS IN STENOGRAPHY TO THE BEST OF
13 MY SKILL AND ABILITY, AND THE FOREGOING PAGES CONTAIN A
14 FULL, TRUE, AND CORRECT TRANSCRIPT OF MY SAID STENOGRAPHY
15 NOTES THEN AND THERE TAKEN.
16 3. I AM NOT IN THE EMPLOY OF AND AM NOT RELATED
17 TO ANY OF THE PARTIES OR THEIR COUNSEL, AND I HAVE NO
18 INTEREST IN THE MATTER INVOLVED.
19
20
21
22 DEBRA A. DIBBLE, RPR
NOTARY PUBLIC AT LARGE
23 STATE OF TENNESSEE
24 MY COMMISSION EXPIRES:
25 APRIL 13, 2002

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